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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.4

No. ~~336~~ 39

JOHN A. HORBACH, APPELLANT,

vs.

EDWARD B. HILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED OCTOBER 7, 1881.

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A Pleas had in the Circuit Court of the United States in and for the eighth judicial circuit and district of Nebraska, before the Honorable George W. McCrary, circuit judge, at the term of May, 1881.

Edward B. Hill, complainant,
vs.
John A. Horbach, respondent.

Be it remembered that on the 3rd day of August, 1878, the above named complainant filed in the clerk's office of said Circuit Court his bill of complaint, which said bill is in words and figures following, to wit:

1 *To the Honorable Judges of the United States Circuit Court for the district of Nebraska, in equity:*

Humbly complaining showeth unto your honors your orator, Edward B. Hill, that he is a resident and citizen of Culpepper, in the state of Virginia, and has been for the past five years or more; that one John A. Parker, junior, was seized in fee-simple of the following described real estate situate in the city of Omaha, Douglas county, Nebraska, to wit: Lots 11 and 12, in block 6; lots 7, 8, and 9, in block 7; lots 1, 2, 3, 4, 5, 6, 9, 10, 11, and 12, in block 8; lots 2, 3, 4, 5, 6, 11, 12, 13 and 14, in block 9, in Parker's addition to the city of Omaha; also lots 7, 8 and 9, in block 3, in Harbach's second addition to the city of Omaha; also lots 1 and 7, in block 9, in Parker's addition to the city of Omaha; lot 5, in block 460; lot 10, in block 486; lot 9, in block 449; lot 10, block 432; lot 11, in block 464; lot 2, in block 429, and lot 1, in block 497, in South Omaha; also lots 8, 9, 10, 11, 12, 13 and 14, in block 4; lots 7, 8, 9, 10, 11 and 12, in block 5; lots 3, 4, 5 and 6, in block 7, all in Parker's addition to the city of Omaha.

As well, also, as a considerable amount of personalty; and about March 14, A. D. 1871, the said Parker, at the city of Omaha, in the state of Nebraska, died intestate; that his only heir at law was his father, John A. Parker, senior, who, upon the death of said John A. Parker, junior, became the sole owner of all of said property, personal and real, subject only to the debts of said John A. Parker, deceased.

And your orator further represents unto your honors that at the date of the death of said John A. Parker, junior, and long before the said John A. Parker, senior, was largely indebted to your
2 orator and divers and sundry persons, and was insolvent; that immediately after the death of his son, John A., jr., he came to Omaha, Nebraska, and for the sole and only purpose of hindering, delaying, and defrauding his creditors; on the 20th day of March, 1871, attempted to convey, without consideration, all said property to which he became heir, both personal and real, to one John A. Harbach, who was at that time, and still is, a resident and citizen of Omaha, in the state of Nebraska, and whom your orator prays may be taken a party respondent to this your orator's bill of

complaint, and for the same fraudulent purpose on said day and year filed his petition in the office of the probate judge for Douglas county, in the state of Nebraska, praying that the said John A. Harbach might be made and appointed administrator of the estate of the said Parker, deceased, claiming in said petition that he, said Harbach, was a creditor of said estate.

And your orator further represents that such proceedings were had that afterwards, on the 2nd day of June, in said year, the said court appointed the said John A. Harbach administrator of the estate of said Parker, who gave the necessary bond and assumed the duties and powers of such administrator.

Your orator further represents to your honors that about the month of August, 1877, your orator commenced a suit in the District Court for Douglas county, Nebraska, against the said John A. Parker, senior, and attached the property hereinbefore described as the property of said Parker, and such proceedings were had that at the October term of said court thereafter your orator recovered a judgment against said Parker in the sum of $3244.00 damages and $38.73 costs of suit; and afterwards, on the 11th day of December, 1877, an order of sale was issued out of the clerk's office of said court, directed to the sheriff of said county, commanding him to sell said property, or so much thereof as might be necessary to make said amount of judgment and costs, and in obedience thereto,
3 and in all respects regularly and according to law, the said sheriff did, on the 19th day of January, 1878, sell said real estate hereinbefore described to your orator for the sum of $, as the property of said John A. Parker, senior, and your orator was the highest and best bidder therefor; and at the February term of said court thereafter the sale of said premises, and all the proceedings connected therewith, were examined by the court and were found regular and in form, and by the court in all respects confirmed, and the said sheriff directed to execute and deliver to your orator a deed therefor in fee-simple, and accordingly, on the 22nd day of April, in said year, the said sheriff did execute and deliver to your orator a deed of said premises, in due form, properly acknowledged by him as such sheriff, so as to entitle it to record, and the same was recorded on the 25th day of April, 1878, in book "24" of deeds, at page 415, in the office of the clerk of said county. And your orator charges the fact to be that at the time of said attachment, levy and sale of said premises the said real estate and all thereof was in fact the property of John A. Parker, senior, and by virtue of the proceedings hereinbefore set forth is now the property of your orator, Edward B. Hill.

And your orators further represents to your honors that at the time the said John A. Harbach pretended to have bought all the interest of said Parker in and to said property it was understood and agreed between him and said Parker that he, said Harbach, should be made administrator of the estate of Parker, junior, and that he should so manage and manipulate said estate as to hide and cover up

as much thereof as possible for the use of said John A. Parker, senior. And your orator charges the fact to be that to that end and for that purpose, at the administrator's sale, dated November 17, 1873, of the real estate of said deceased, and said administrator John A. Harbach became in fact the purchaser for the pretended consideration of $2,254.50, of lots 11 and 12, block 6; lots
4 7, 8, and 9, in block 7; lots 1, 2, 3, 4, 5, 6, 9, 10, 11, and 12, in block 8; lots 2, 3, 4, 5, 6, 11, 12, 13, and 14, in block 9, in Parker's addition to the city of Omaha; also lots 7, 8, and 9, in block 3, in Harbach's second addition to the city of Omaha; but for the fraudulent purpose of defrauding the creditors of said Parker, senior, caused the purchase to be made in the name of one J. E. House, at the city of Omaha, and about the 15th day of January, 1874, the said Harbach, as such administrator, executed a deed to said House of said property, which deed was duly acknowledged so as to entitle it to record, and was recorded Jan. 28th, in said year, in book "15" of deeds, at page 397.

While your orator charges the fact to be that the said House paid no consideration for said lots, but the title was taken in his name as a mere device and shift to defraud the creditors of Parker and to evade the statutes of Nebraska touching the duties and powers of administrators, and charges the fact to be that the said lots were at that time worth at least $5,000.00 in cash.

And your orator further represents to your honors, that at said administrator's sale, for the same fraudulent purpose and design, the said administrator, John A. Harbach, in fact purchased the following described real estate, situate in Douglas county, state of Nebraska, to wit: lots 1 and 7, in block 9, in Parker's addition to the city of Omaha; lot 5, in block 460; lot 10, block 486; lot 9, block 449; lot 10, block 432; lot 11, block 464; lot , block 429, and lot 1, block 497, in South Omaha; but directed the purchase to be made in the name of Herman Kountze, for the pretended consideration of $17.00, and afterwards, about January 15, 1874, the said Harbach, as administrator, conveyed said property by deed in due form to the said Herman Kountze and acknowledged the same, so as to entitle it to record, which was recorded on the 28th day of January in said year, in book 15 of deeds, at page 395, in the office of the county clerk of said county; and your orator charges the fact to be,
5 that the said property was worth at least $300.00.

Your orator further represents that at administrator's sale dated February 23, 1874, for the same fraudulent purpose and design, the said administrator, John A. Harbach, in fact purchased the following described property, situate in Douglas county, state of Nebraska, to wit: lots 8, 9, 10, 11, 12, 13, and 14, in block 4; lots 7, 8, 9, 10, 11, and 12, in block 5; lots 3, 4, 5, and 6, in block 7, in Parker's addition to the city of Omaha; but directed the purchase to be taken in the name of B. E. B. Kennedy for a nominal consideration, and afterwards, about June 9, 1874, the said John A. Harbach, as such administrator, conveyed said property by deed in

due form to said Kennedy, which deed was duly acknowledged so as to entitle it to record, and was recorded June 11th in said year, in book 16, at page 302 of deeds, in the office of the county clerk of said county, while your orator charges the truth to be that the conveyances of said Harbach, administrator, to House, Kountze, and Kennedy were all made by said Harbach, administrator, as mere shifts and devices, to hinder, delay, and defraud the creditors of said John A. Parker, senior, and that he, said Harbach, was in fact the purchaser of all of said property, and neither said Kountze, House, or Kennedy, or either of them, was present at the administrator's sales when said pretended purchases were made in their names, but the purchases were made in their names at the instance of said administrator for the purpose aforesaid, and no other, and that neither House, Kountze, or Kennedy paid any consideration for said property or any part thereof.

And your orator further represents that the said John A. Harbach, for the fraudulent purpose aforesaid, permitted said several conveyances by him as administrator to remain upon the records of said Douglas county for about one year, and then, on January 22, 1875, the said House, without consideration, conveyed said property by deed in due form, properly acknowledged, so as to entitle it
6 to record, the same property conveyed by Harbach as administrator to him as aforesaid, which deed was recorded March 6, 1875, and likewise the said Herman Kountze, on December 18, 1874, conveyed to John A. Harbach the same property conveyed to him by Harbach as administrator, by deed in due form, which deed on the same day was recorded in the office of the county clerk of Douglas county which deed was made without consideration, but simply at the instance and suggestion of said Harbach; and likewise did the said B. E. B. Kennedy and wife on December 28, 1874, convey, by deed in due form, back to the said John A. Harbach the same property conveyed by said Harbach as administrator to said Kennedy as hereinbefore set forth, which deed was acknowledged, and on December 29 of said year duly recorded in the office of the county clerk of Douglas county.

And your orator further represents to your honors, that these several conveyances to John A. Harbach by House, Kountze, and Kennedy were voluntary and at the instance of said Harbach, and in pursuance of the original arrangement between them at the time the titles were taken in their names from the administrator, and without any consideration whatever passing between the parties; and charges the fact to be that the said Harbach is the fraudulent trustee of said John A. Parker, senior, and that he, Harbach, has no legal or equitable interest in said property; that the estate of John A. Parker, junior, has been administered upon and entirely settled and the administrator discharged; that there was no appearance by counsel generally for said estate, but the said Harbach did almost the entire business in the settlement of the estate and had everything his own way without objection; that the said John A. Parker, senior, is

utterly insolvent, and has no other property out of which to make said judgment and costs or any part thereof; that your orator is the owner in fee-simple of said property, but he is unable to sell
7 or dispose of the same at any fair price by reason of the title to said property being spread upon the records of said county in the name of said Harbach; that they are clouds upon your orator's title, by reason whereof your orator is unable to negotiate or use said property to any advantage.

And your orator further represents that the said lots and real estate hereinbefore described, and all thereof, is not fenced or built upon, but is wholly vacant and unoccupied.

And your orator had well hoped that the said Harbach would have released to your orator the property hereinbefore described, and would have desisted from alleging and setting up any claim thereto, as in equity and good conscience he ought to have done.

But now, so it is, may it please your honors, the said John A. Harbach, with divers other persons to your orators unknown, whose names, when discovered, your orator prays may be be inserted herein with proper and apt words to charge them as respondents hereto, contriving how to wrong, injure, and oppress your orator in the premises, absolutely refuses so to do; all of which actions, doings, and refusals tend to the manifest wrong, injury, and oppression of your orator in the premises.

In tender consideration thereof, and for as much as your orator is without adequate remedy at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this and like nature are properly cognizable and relievable—

To the end, therefore, that the said John A. Harbach and his confederates, when discovered, may full, true, direct, and perfect answers make to all and singular the matters and things hereinbefore stated and charged, but not under oath, their oaths being hereby ex-
8 pressly waived, and that the said Harbach shall so answer not only to the best of his knowledge and remembrance, but also to the best and utmost of his hearsay, information, and belief; and that it may be adjudged and decreed by the court that the property in this bill described was in equity the property of said John A. Parker, senior, and liable to be sold to pay the amount of your orator's judgment, interest, and costs; and that the several conveyances made by said Harbach, as administrator, to House, Kountze, and Kennedy, were each and all made without consideration, and as a mere device to secrete and cover up said property for the use of said Parker, and in fraud of his creditors, and especially your orator.

That the several conveyances of said property back to Harbach were but another link in carrying out and consummating said fraud; and that said Harbach holds the title to said premises, and all thereof, as the fraudulent trustee of said Parker, senior; and that your orator is the owner in fee-simple of said property, and all thereof; and that he, said Harbach, be adjudged and decreed by the court, within a reasonable time to be fixed by the court, to convey said property to

your orator by deed in due form acknowledged, so as to entitle it to record, and that in default thereof that this decree shall operate and have the same effect as if said conveyance had been made as directed by the court, and prays for such other and further relief as to your honors may seem right and equitable; and also to grant to your orator the most gracious writ of subpœna, to be issued and directed to said respondents, at a day certain therein to be inserted, personally to be and appear before your honors in this honorable court, and then and there to answer the premises; and further, to stand to, perform, and abide by such order and decree therein as to your honors shall seem to be agreeable to equity and good conscience.

REDICK AND CONNELL,
Sol's for Compl't.

9 Said bill is endorsed as follows: No. 336 D; in U. S. circuit court, district of Nebraska; Edward B. Hill, complainant, *v.* John A. Harbach, respondent; bill of complaint; filed Aug. 3, 1878; Watson B. Smith, clerk; Redick and Connell, sol's for compl't.

Thereupon afterwards, to wit, on the 7th day of October, 1878, an answer was filed in said case, which said answer in in words and figures following, to wit:

In the circuit court of the United States within and for the district of Nebraska.

Edward B. Hill, complainant, *vs.* John A. Harbach, respondent. } In chancery.

This respondent, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this respondent is advised is or are material or necessary for him to make answer unto, this respondent, answering, saith: That it is true, as alleged in said bill of complaint, that the said John A. Parker, junior, died on or about the said 14th day of March, A. D. 1871, seized in fee-simple of the said real estate set forth and described in the said bill of complaint. But this respondent denies that said John A. Parker, junior, was at the time of his said decease seized or possessed of a considerable amount of personal property also as alleged in said bill of complaint, and saith that, on the contrary thereof, the said John A. Parker, junior, at the time of his said decease owned and possessed no personal property except ordinary articles of per-
10 sonal wearing apparel.

Further answering, the respondent saith that said John A. Parker, junior, died intestate; that at the time of his death he was largely indebted to sundry persons in divers and sundry amounts;

that on the 22nd day of March, A. D. 1871, the said John A. Parker, father of the said Parker, deceased, filed a petition in the county court within and for Douglas county and state of Nebraska for letters of administration of the said estate of said Parker, deceased, and for the settlement of said estate and the payment of debts against the same; that such proceedings were duly and lawfully had therein that on the 8th day of May, A. D. 1871, this respondent was duly appointed administrator of said estate of the said John A. Parker, deceased, by the consideration of said court; that this respondent duly and lawfully qualified as such administrator by taking and subscribing the required oath, and the filing and approval of a bond in conformity with law and letters of administration were duly and properly issued to the respondent as such administrator; that the respondent took proper and lawful charge of said estate; that such proceedings were had therein that a large amount of indebtedness was proven against said estate, to wit, the sum of $10,000 or $11,000.

That there was no personal property belonging to said estate that ever came to the hands of the respondent, nor to his knowledge, out of which said indebtedness against said estate or any part thereof could be paid; whereupon on or about the day of , A. D. 1873, this respondent, as the administrator of said estate, made application in due form of law to the district court and to the judge thereof of the state of Nebraska, within and for Douglas county, for a license to sell the real estate of and belonging to said estate of said Parker, deceased, or so much thereof as should be necessary to pay all the debts and liabilities of said estate; that such proceedings were duly and legally had therein that on
11 the 13th day of October, A. D. 1873, by the due consideration of the Honorable George B. Lake, then presiding judge of said district court, and in open court, a license and order of sale was granted to the respondent as such administrator, authorizing and directing him to proceed to sell at public auction, according to law, the said real estate of said decedent, John A. Parker, deceased, including all the property described in the complainant's said bill of complaint; that under and in pursuance of said license and order of sale by said court, and in pursuance of and according with the laws of the state of Nebraska in such case made and provided, the respondent, as such administrator, advertised and sold all of said real estate belonging to the said estate of said Parker, deceased, including all the lots and lands described in the bill of complaint herein at public sale in due form of law, to wit, on the day of , A. D. 1874, to Herman Kountze, J. E. House, and B. E. B. Kennedy, as follows, to wit: To said Herman Kountze, lots one and seven in block nine in Parker's addition to Omaha, and lot two in block 429; lot ten in block 432; lot nine in block 449; lot five in block 460; lot eleven in block 464; lot ten in block 486, and lot one in block 497, all in South Omaha, at and for the sum of two hundred and twelve dollars, he, said Kountze, then and there being the highest

bidder for said lots respectively, and said sums being the highest bidden for said property.

To said J. E. House, lots eleven and twelve in block six; lots seven, eight, and nine in block seven; lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve in block eight; lots two, three, four, five, six, eleven, twelve, thirteen, and fourteen, in block nine, all in Parker's addition to the city of Omaha; also
12 lots seven, eight and nine, in block three, in Harbach's second addition to the city of Omaha, at and for the sum of two thousand two hundred and fifty-four dollars and fifty cents, he, the said House, being the highest bidder therefor, and said sum being the highest amount bidden for said property. To said B. E. B. Kennedy, lots eight, nine and ten, in block nine, in Parker's addition to Omaha, and lot one, in block 481, in South Omaha, at and for the sum of two hundred and seventy-two dollars and seventy-five cents, that sum being the highest amount bidden for said lots, and said Kennedy being the highest bidder therefor. That all of said purchase money as aforesaid was paid to the respondent as such administrator by said purchasers respectively.

The respondent, further answering, saith that as to the said following described real estate set forth in said bill of complaint, whilst the said John A. Parker, junior, held the title in fee thereto, to wit, lots eight, nine, ten, eleven, twelve, thirteen and fourteen, in block four; and lots seven, eight, nine, ten, eleven and twelve, in block five; and lots three, four, five and six, in block seven, all in Parker's said addition to Omaha; yet the said John A. Parker, junior, did not in fact own the same, but had sold and disposed of all of said lots to the said John A. Parker, senior, and held the same in trust for the said John A. Parker, senior, under and in pursuance of a certain contract in writing duly executed and delivered by said Parker, junior, to said Parker, senior, for a good and sufficient consideration therefor, the date whereof was the seventh day of September, A. D. 1870.

That afterwards, to wit, on the 20th day of March, 1871, the said John A. Parker, senior, who was then the owner and holder of said written agreement, for a good and sufficient consideration assigned, transferred and delivered said written agreement to this respondent, thereby conveying and transferring all right, interest and
13 property he, the said John A. Parker, senior, had in or to said written agreement, as well as all interest he had in or to said property to the respondent, and that this respondent has ever since held and owned the same in his own right and in trust, subject only to whatever interest there may have been therein belonging to said estate of said John A. Parker, junior, deceased.

That at said administrator's said sale the said interest of said estate in said lots and lands last hereinbefore described was also duly advertised and sold at public auction at the date aforesaid, to the said B. E. B. Kennedy, subject to the said ownership and interest of the respondent, he, the said Kennedy, being the highest bidder

therefor, and the sum bidden by him for said lots respectively being the highest sums bidden therefor respectively.

Further answering the said bill of complaint the respondent says that the said sales as hereinbefore set forth, and all the proceedings relative thereto, were duly and fully reported to said district court and to the presiding judge thereof in open court, and was by said court duly and fully ratified and confirmed, and this respondent was directed to by said court, and he did execute, acknowledge, and deliver unto said purchasers at said sale respectively good and sufficient deeds of conveyance of said property so as aforesaid sold to them respectively. All which said acting and doing of the respondent as such administrator will more fully and at large apper by the said records and files of district court in said cause, and to which the respondent will refer and read the same on the hearing of this cause.

For a further answer to said bill of complaint the respondent says it is not true as alleged in said bill that at said sale by this respondent as such administrator this respondent became in fact the
14 purchaser of said property, or any part or parcel thereof, and denies that he caused the purchase to be made in the name of either said House, Kountze, or Kennedy, for the fraudulent purpose of defeating the creditors of said Parker, senior, or for any other fraudulent purpose whatever, but on the contrary thereof the respondent avers that said sales and each and every of them were made for the sole purpose of paying the debts of and against said estate of said Parker, deceased; that the same was fairly and honestly made for the purposes aforesaid, and that said property all sold for a fair price and for all it was worth, and that no greater price could have been obtained for said property or any part or portion of it at that time.

For further answer the respondent saith that he received and credited to said estate the purchase prices of all said real estate so as aforesaid sold by him as such administrator, and duly paid out the same as such administrator in settlement of said estate; that he duly rendered his final account as such administrator into said county court, to the judge thereof. That said final account was duly approved by said county court, and by the judge thereof in due form of law, and this respondent was duly discharged by said county court as such administrator, and said estate settled and closed. All which will more fully appear by the records and files in said county court of the settlement of said estate, and to which the respondent will refer and read the same on the hearing of this cause.

This respondent, further answering, says that on the said 20th day of March, A. D. 1871, this respondent purchased from said John A. Parker, senior, all right, title, and interest of said Parker senior in or to the said estate of said Parker deceased, subject to the lawful debts against said estate, for and in consideration of the sum of nine thousand and six hundred dollars, and then and there said
15 John A. Parker, senior, executed, acknowledged, and delivered unto the respondent a deed of conveyance in due form of

law of all and singular the said lots and lands aforesaid. That said deed was duly filed and recorded in the office of the county clerk in and for said Douglas county on the 21st day of March, A. D. 1871. That at the date of said purchase by this respondent of said interest of said Parker senior in said property and estate of said Parker junior as aforesaid, this respondent had no knowledge whatever of the said pretended debt of the complainant, nor of any other person or persons against said Parker senior. That said purchase by this respondent as aforesaid was in good faith for a valuable consideration as aforesaid; that he paid and accounted to said Parker senior for the entire amount of said consideration, long before he ever heard of the complainant, or of his said pretended claim, or of any other debt or liability of the said Parker senior, and this respondent denies each and every allegation of said bill of complaint wherein he is charged with any collusion or fraudulent purpose or intent to injure or defraud the complainant or any other creditor of the said Parker senior.

The respondent further denies that the complainant ever attached said property at the suit of himself against said John A. Parker, senior, as alleged in said bill of complaint. And this respondent denies all and all manner of combination and confederacy wherewith he is by said bill of complaint charged, and also denies each and every allegation and fact in said bill of complaint contained and not hereinbefore fully and expressly admitted or answered unto.

KENNEDY & GILBERT.
Sol'rs for Respondent.

Said answer is endorsed as follows: No. 336 D; circuit court of the U. S., district of Nebraska. Edward B. Hill *vs.* John A.
16 Harbach. Answer. Kennedy & Gilbert, sol'rs for resp't; filed Oct. 7, 1878; Watson B. Smith, clerk.

Thereupon afterwards, to wit, on the 26th day of December, 1878, a replication was filed in said case, which said replication is in words and figures following, to wit:

In the United States circuit court for the district of Nebraska.

Edward B. Hill
vs.
John A. Harbach. } Replication.

This repliant, now and at all times saving to himself all exceptions to the answer, for replication thereunto says his bill of complaint is sure, certain, and sufficient in law to be answered unto, and said answer is untrue, uncertain, and insufficient to be replied unto, without that any other matter or thing in said answer contained not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of

this repliant. All which matters and things this repliant will aver, maintain, and prove as this honorable court shall direct, and prays as in his said bill he has already prayed.

REDICK & CONNELL,
Sol's for Complainant.

Said replication is endorsed as follows: No. 336 D; in U. S. circuit court, district of Nebraska; Edward B. Hill *vs.* John A. Harbach et al.; replication; filed Dec. 26, 1878; Watson B. Smith, clerk; Redick & Connell, sol'rs for compl't.

17 United States circuit court, district of Nebraska. In equity.

Edward B. Hill
vs.
John A. Horbach.

Testimony taken on the part of the complainant under the 67th rule of practice for the courts of equity of the United States by Homer Stull, examiner in equity, at Omaha, December 28, 1878:

Present—John I. Redick, esq., and W. J. Connell, esq., for complainant; B. E. B. Kennedy, esq., for respondent.

B. E. B. KENNEDY, sworn as a witness on the part of complainant, examined by Mr. Redick, testified as follows, viz:

Question. I see by the answer in this case that you bought certain lots in Parker's addition to Omaha at administrator's sale, where John A. Horbach was acting as administrator of the estate of John A. Parker, jr.; at whose instance did you buy, if at any one's?

Answer. At the instance of myself.

Q. Whose money, in fact, paid for the lots, or any part of them?

A. The estate of John A. Parker, jr., deceased, was indebted to me for fees for legal services, and I purchased the property and offset it in settlement of my fees and charges for legal services against the estate.

Q. Did you ever convey any of those lots back to Horbach?

A. Some time subsequent to the confirmation and conveyance of the property to me I sold the property to Mr. Horbach and conveyed it by deed—myself and wife.

Q. Did any consideration or money pass between you and him, and if so, how much?

A. There did; a consideration in money passed from Mr.
18 Horbach to me, and it is named in the deed. I do not remember the amount.

Q. Now is it not a fact that at the time you bought these lots, it was understood either directly or indirectly, or both, by you that you were to buy in these lots or some of them, in fact for the benefit of Horbach?

A. It was not.

Q. What portion of them did you convey back to him; do you recollect?

A. I do not now recollect the description of the lots I conveyed to him, but I did not convey all to him that I purchased at that sale.

Q. How much did you give the estate credit for when you bought them?

A. For the amount of my bid. I do not remember what that was. The records of the district court at the confirmation of the sale will show.

Q. Did Horbach pay you back when you conveyed back to him an amount of money in proportion to the number of lots conveyed to him in proportion to those first bought?

A. He paid me the amount named in the deeds without regard to the amount bid.

Q. How did the negotiations arise? Did he go to you or you go him?

A. I do not remember which may have spoken of the matter first. I know I preferred the money to the property at the time I conveyed to him.

Q. Now did he not say to you, if not in these words in some language similar, that you should bid in these lots or some of them, and after the matter was closed up he would take them back from you and pay you for them or make it right? What did he say in that regard, if anything?

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A. I cannot recollect the conversation, if any conversation passed between Mr. Horbach and me at that time; I do recollect that I desired money for my services and the estate had no money to pay, and at the time that I purchased the property I did it for the purpose of securing my pay and getting it that way—taking property instead of money.

Q. Will you swear there was no such conversation as I have suggested in the question above, between you and Horbach before you bid at the sale?

A. If there was any such conversation it has passed entirely from my memory.

Q. Did he not say to you that he would have House and Kountze buy in the balance, or something in that regard; what did he say?

A. I do not recollect any conversation that ever passed between Mr. Horbach and myself relative to having Kountze and House purchase any property of the estate; I do not think there ever was any such conversation; I am pretty positive there was not; the first I knew of their connection in purchasing property at the sale, was in seeing them there and bidding on the property; I will state further that at the sale both House and Kountze bid against me on a portion of the property that I particularly desired to purchase.

Q. Was the property worth the amount of money that Horbach paid you as expressed in the deed?

A. I think it was.

Q. Was it worth anything more than when you bid it in at the sale?

20 A. I do not think there was any material change in values during the time.

Q. When you conveyed these lots back to Horbach, what did he pay you; money, notes, or promises?

A. My recollection is, it was a check on the bank, but I am not positive as to that; it was money or its equivalent.

Q. Then you just bid enough at the sale to cover all your charges against the estate; am I correct?

A. I am not able to state now, but my best recollection is that I did not; I think there was a small balance that was due me, but I cannot speak positively now from recollection.

Q. Do you recollect how many lots you bought at the public sale?

A. No, I do not; there was a certain portion of the lots that was sold subject to prior liens, if my recollection serves me rightly, and I do not now recollect the number of those there; I think that a number that were sold subject to prior incumbrances or claim was struck off to me at a nominal figure of perhaps one dollar each.

Q. Was it not the last lots purchased by you that you sold to Horbach; the lots that you bought, as you say in your answer, subject to incumbrance or trust?

A. I am not able to state, without reference to the deeds, the price of the lots that I sold and conveyed to Horbach; there were certain of the lots that I bought at that sale that I think I did not convey; some of which, if not all of them, were in Horbach's addition that were sold at the same time, and whether there were any that I purchased in Parker's addition omitted from the sale to Horbach, I am not able to say.

Q. Do you hold those lots that you did not convey to Horbach?

A. I am not now able to say whether I hold any or not; I

21 conveyed to Boggs & Hill, or one of them, about a year ago, or less, lots in Horbach's addition; my understanding is that they were all conveyed to Horbach, all that I bought in Parker's addition, and perhaps a lot in South Omaha; but I would not undertake to testify from memory now; the deed will show exactly what it was.

Q. Is it not a fact that Horbach received either directly or indirectly or in some manner the purchase-money received from these lots that you sold, either in whole or in part?

A. Horbach as administrator had the settlement of the estate; I stated in the outset that I did not pay any money.

Q. When you sold to Boggs & Hill, did not Horbach receive some portion of that?

A. Not any.

Q. State whether Horbach received directly or indirectly any of the proceeds of the money you got from this property?

A. Not from me.

Q. Did he from Boggs & Hill?

A. No, sir; I know of nobody that got any of the proceeds but myself; it was paid to me for my own individual use, and I had the benefit of it.

Q. The amount of money expressed in the deeds to Horbach was the amount received from him in money?

A. Yes, sir.

Q. And you had no interest in that money received, either directly or indirectly, before it was paid to you, had you?

A. I had no interest in that money until I delivered the deed and received it.

B. E. B. KENNEDY.

Signed in my presence.

H. STULL, *Examiner.*

22 JACOB E. HOUSE, a witness called on behalf of the complainant, being duly sworn, as hereinafter certified, testified as follows:

Q. I see you bought at administrator's sale a number of lots; Horbach was the administrator of John A. Parker, jr., the lots being in Parker's addition to the city of Omaha. At whose instance did you buy those lots?

A. My own, sir.

Q. Who called your attention to the fact that there was a sale of that kind going on?

A. It was advertised.

Q. Did you see it in the paper?

A. Yes, sir; I saw it also posted.

Q. What did you pay for the lots you bought?

A. I do not recollect now; it was between $2,800 and $3,000; somewhere in that neighborhood; I think close on to three thousand; that is, for lots and taxes.

Q. Did you talk to any one about buying the lots before you bid on them?

A. No, sir.

Q. You did not talk to Horbach about it, did you?

A. I won't be positive about that, but what I may have had some conversation with him about the lots, their value, etc.

Q. After your purchase, did you pay over the money to any one?

A. I paid to Mr. Horbach.

Q. How did you pay it, by check, money, or how?

A. I think I paid it by check.

Q. Did you ever receive that check back in any way?

A. I believe I did, sir.

Q. How long after?

A. I do not really know as to that, how long it was; I got it through the bank, I think.

23 Q. Had the check been paid to Horbach?

A. I believe so.

Q. Do you know so?

A. I don't know so, but I suppose so, of course.

Q. Did you give Horbach the check before you got your deed of the premises?

A. Well, I can't answer that question positively, but I think I got the deed at the time. I am not sure. I think it was after the confirmation of the sale that I made my check.

Q. Did you convey this property back to Horbach?

A. The same property, with the exception of some lots that were sold during the time it was in my hands—while I was owner of it. The balance I re-deeded to Horbach.

Q. Who sold the lots that you conveyed during the time that you held the title?

A. It was done through a gentleman whose name I cannot recollect—a gentleman down in the U. P. shops at work there.

Q. Who requested you to make the deed?

A. This gentleman.

Q. Did not Horbach request you to make a deed to him?

A. No.

Q. Who received the consideration from the man that bought those lots?

A. Some of those lots were sold on time.

Q. To whom were the obligations made; to you or Horbach?

A. Well, I cannot answer that positively. I don't know what part of the purchase-money was paid. I think it was paid to myself, if there was any paid at all, but I am not clear about that whether there was anything paid down or not.

Q. If there was anything paid down?

A. It was paid to me.

Q. Did you not pay it to Horbach?

24 A. Not, I think, directly.

Q. Well, indirectly, how did you pay it to him?

A. I am not sure I paid any of it to him; I do not recollect whether I did or not.

Q. Ain't there a way of finding out?

A. It is possible I may have, but I don't know.

Q. How many lots were sold during the interim between the time and you conveyed to Horbach?

A. Two, and it may have been three.

Q. If you had taken the obligations of these purchasers would you not have them?

A. It must be a matter of record.

Q. They may have given you a note and not a morgage?

A. They gave me a mortgage, and in two instances I have cancelled the mortgage.

Q. Did you negotiate the sale of either of these lots?

A. These lots were negotiated by this gentleman in the shops.

Q. What does he do?

A. I think he is in the pattern department; I am not sure, but I think so.

Q. Do you recollect how much those lots sold for?

A. I do not recollect how much.

Q. Was it not understood through talk between you and Horbach or not; was it not understood directly or indirectly between you and Horbach before you purchased this property at the sale that they were to be taken back from you by Horbach or somebody?

A. No; there was no obligation of that kind at all.

Q. I ask you whether it was not understood directly or indirectly between you and Horbach that that was to be done without any legal obligation?

25 A. There was no obligation at all; there was no understanding between Mr. Horbach and myself before the sale in reference to this property—that he was to take it back.

Q. Nor some one?

A. No; not that he or somebody else was to take it back.

Q. How did you come to reconvey the same property to him?

A. Because I had carried it as long as I thought it was worth while; there was no money in it to me, and I reconveyed it to him; he made me whole upon the transaction.

Q. Did he pay you the interest upon the money; did he pay you the interest upon the money that you had advanced?

A. Yes, sir; he made me whole.

Q. Then you will not swear that the consideration for which these lots were sold in the interim did not go to Horbach?

A. No; I won't swear either way in reference to that; I don't recollect.

Q. How did you receive your pay back from Horbach—by check or money; do you recollect?

A. I do not recollect; I think in money, though, but I won't be positive.

Q. At the time of this sale by Horbach as administrator were not you and Horbach officing together?

A. Mr. Horbach was doing business over on the corner of 13th and Harney. He was also vice-president of the Omaha and Northwestern Railroad Company, and he occasionally came into the office and did some writing, but not to any amount, some weeks once or twice a week, and maybe oftener, and some weeks he would not be there at all at that time.

26 Q. Have you not been connected with the road and he also for the past 5 or 6 or 7 years?

A. Yes, sir; ever since it was organized.

Q. Do you want to be understood to say that your attention was not called to this sale by Horbach and by him requested to bid at the sale?

A. Mr. Horbach did not request me to bid at the sale.

Q. Who did?

A. No person.

Q. Then as I understand you you went there on your own hook and bought those lots on speculation?

A. Yes, sir.
Q. Had you bought property in Omaha before?
A. I had.
Q. And since?
A. No, sir.
Q. That cured you?
A. I bought property before.
Q. Did you ever see these lots before you bought it?
A. Yes, sir.
Q. Walked over them and picked them out?
A. No, I did not pick them out separately. I knew where they were located; I had ridden over the ground.
Q. Did you not know during the time you held that deed in your name that Horbach was negotiating and trying to sell some of them?
A. No, I did not know that.
Q. Had he any interest directly or indirectly in the check that you gave after your purchase of the property?
(Objected to as immaterial.)
27 A. He had no interest in my check; no, sir.
Q. He had none?
A. No, sir.
Q. How long did you continue to hold this property before you deeded it back to him, if you recollect?
A. Something over a year.
Q. Had property gone down or gone up during that time?
A. Property had depreciated.
Q. How much had it depreciated?
A. I am not able to say.
Q. How much on that property—how much had it shrunk within that year?
A. I could not tell; I should say it had shrunk twenty-five per cent., taking the general run of property in the city and values placed on it at that time.
Q. During the year?
A. Yes, sir.
Q. Did you yourself ever sell any of that property personally?
A. I did not, only through this gentleman.
Q. Now if it should turn out to be true that the proceeds of the sale of these two lots was turned over to Horbach by you, can you explain why that was done; did you owe Horbach anything at that time?
A. Well, I don't know; I could not tell that.
Q. Explain why that would be done?
A. No; I don't know that I can.
Q. Have you and Horbach not been quite intimate both as friends and in business relations for the past ten years?
A. Yes, certainly; we have for the last twelve or fifteen years, ever since we have known each other; I do not know that anything

ever came up to destroy any friendly relations existing be-
28 tween us.

Q. When you sold this property back to Horbach, did you go to him or did he come to you to open negotiations?

A. I cannot state how that was brought about. We often talked about the property in Parker's addition, and also other property in this city.

Q. Did Horbach ever tell you, or was anything said to you in this regard, that he being administrator was forbidden by the law from bidding on the property, and he wanted some one to bid it in his behalf?

A. No, sir.

Q. You never heard of that?

A. I knew, of course, that he had no authority to bid, from my own knowledge.

Q. How did you find that out?

A. I think I could learn that by reading.

Q. Where did you read it; in what book?

A. I could not name the book; I read a great many things that I don't pay attention to; I saw notices of it.

Q. You saw legal notices in which they say that the administrator has no right to bid?

A. I mean I may have picked it up, Mr. Redick, in some notice; I may have picked it up in some law book or some statute.

Q. You never heard it from Horbach?

A. I may have or I may not have; I won't say that I have or have not.

Q. Did Kountze request you to bid at this sale?

A. No, sir.

Q. Did any one?

A. No, sir.

Q. Will you swear that your check was ever paid by the bank to Horbach for the purchase-money of those lots?

29 A. I think it was, sir.

Q. Have you got the old check?

A. Some of my old checks I have and some I have not; I do not know whether I have got checks back about that date or not.

Q. Could not you ascertain whether that check has been paid or not; and if so, when?

A. If it is among my papers I could ascertain.

Q. Would your bank book show?

A. It would not show to whom it was paid.

Q. It would give the date and the amount?

A. I presume it will; I don't know certainly.

Q. Will you look and leave a memorandum with the master of that fact whether you can ascertain if that check was given at date with the amount, and on what bank, and if you have the check produce that and leave it with the master?

A. I will do that, sir.

(Marginal note.) Later.—I have looked among my papers and I do not find the check; two years ago I destroyed a number of papers, and that may be among them.

Q. And also leave the name of that party that negotiated the sale of the lots?

A. I know his name well enough if I could only call it to my mind.

Cross-examined by Mr. KENNEDY:

Q. Who were present at the administrator's sale referred to by Mr. Redick?

A. Herman Kountz, B. E. B. Kennedy; I don't recollect any others; there were others there, but I don't recollect who now; I think Mr. Ambrose was there, but I won't be positive.

Q. How many and who bid upon any portion of the property that was struck off to you besides yourself?

(Objected to as not proper cross-examination and immaterial.)

30 A. Mr. B. E. B. Kennedy I know bid against some of the property, and I think Mr. Herman Kountze did.

Q. Were there any others; do you recollect?

A. I do not.

Q. Calling your attention to your testimony in respect to paying taxes upon this property, state if you can what amount you paid and when payments were made?

A. The amount, as I recollect now, was between $250 and $350, something about that; I think it was in the neighborhood of three hundred and fifty dollars, and it was paid in the fall of 1874, I think.

Q. Was it for taxes that accrued prior or subsequent to your purchase?

A. It was taxes that were paid subsequent to my purchase of the property. They accrued subsequent also. I held the property some time and at the time of the sale all prior taxes were paid in the original purchase money as I recollect it now.

Re-direct examination by Mr. REDICK:

Q. Who called your attention to the payment of the taxes on these lots; any one?

(Objected to as not proper re-examination.)

A. I don't know that there was any one, any more than that my attention was called to the fact that taxes were due.

Q. Will you swear that Mr. Horbach did not call your attention to the fact and request you to pay the taxes?

A. I will not swear that he did or did not.

Q. What is your best impression?

A. My best impression is that he did not, but I won't be sure about that. We may have been talking about taxes and it may be that he mentioned it.

Q. Is it not a fact that the amount paid on the taxes was from the money of Horbach and not your own?

31 (Objected to as not proper re-examination.)

A. It was my own money that I paid taxes with.

Q. Was it not understood between you and him before you paid these taxes that he would make you good?

A. It was not.

Q. Did you not expect this at the time you bought the property and at the time you paid these taxes that Mr. Horbach or some one would take this property off your hands, and that you would not lose anything?

(Objected to as not proper matter for re-examination.)

A. No; I did not expect anything of the kind.

Q. Do you know on which side of Saunders or 23d street this property is located?

(Objected to as not proper matter for re-examination and as immaterial.)

A. The property is on the west side, but not all of it.

Q. How much of it?

A. The greatest part of it was on the west side; there were a few lots in Horbach's second addition, I think.

J. E. HOUSE.

Signed in my presence.

HOMER STULL, *Examiner*.

HERMAN KOUNTZE, a witness called for complainant, being by me first duly sworn, as hereinafter certified, and examined in chief by Mr. Redick, testified as follows, viz:

Q. I see that you attended an administrator's sale, in which the property of John A. Parker, jr., was being sold, in 1874, and John A. Horbach was the administrator; how did you come to attend that sale?

A. I think my attention was called to the matter by Mr. Horbach and probably by an advertisement of the property; I do not exactly remember how I came to attend, but probably in that way.

32 Q. Aint it a fact that Horbach called your attention to it first?

A. It is probable that Horbach called my attention to the matter of the sale.

Q. Was the estate owing you anything at that time?

A. Yes; myself and my brother.

Q. How much?

A. I don't remember; I think about one hundred and fifty dollars; maybe two hundred dollars; some such matter.

Q. What for?

A. For money loaned to Mr. Parker, jr.

Q. State whether or not there was any understanding, directly or indirectly, or any way, between you and Horbach that you was to

buy this property in, or any part of it? That it would be taken back off your hands by him?

A. I don't think there was any arrangement by which he agreed to ever buy it back from me. He may have called my attention to the sale, that it was coming off, and I attended the sale and bought this property. There was no very large amount that I bought.

Q. At the time you bought it, is it not a fact that you expected that Horbach or somebody would take it off your hands?

A. I supposed I might possibly sell it to Mr. Horbach.

Q. Why did you think that?

A. Because the property was being sold at what I considered very low prices—cheap enough.

Q. Is that the only reason you had for thinking Horbach would take it off your hands?

A. I don't think there was any agreement on the part of Mr. Horbach to take it off my hands.

Q. Now be kind enough to answer this question squarely: Was not it understood between you and Horbach, directly or in-
33 directly, at the time you bought or before, that you was not to hold this property, but to buy it in for the benefit of Horbach, really at the instance of Mr. Horbach?

(Objected to by counsel for respondent as leading.)

A. Well, as I have already stated, I attended the sale, and I think it is more than probable that Mr. Horbach called my attention to the matter. There was no agreement that I have any recollection of whereby he agreed that if I bought the property he would buy it back of me at the price I was paying, or, in other words, that I was buying this property for Mr. Horbach.

Q. Is that the best answer you will give? (The question last-above stated is repeated to the witness.)

A. The answer I gave to the matter is that Mr. Horbach had not made any agreement to buy this property from me, and that I did not expect to sell the property and probably to sell it to Horbach, as I considered that I was buying it at what I considered low figures, and the facts are that I did subsequently sell it to Mr. Horbach, but not at the price I paid.

Q. More or less?

A. More.

Q. Is it not a fact that you bought this property at the instance of Mr. Horbach?

(Objected to as leading by counsel for respondent, and also on the ground that the witness has already answered the question.)

A. I think I attended the sale at the instance of Horbach.

Q. That does not answer the question; if you did not buy at his instance say no.

A. I think I attended the sale at the request of Mr. Horbach, as I have already stated.

Q. You say you attended the sale at the instance of Horbach; did you not buy this property at his instance?

(Counsel for respondent objects on the same ground as to
34 the last question, viz., that it is leading, and also that it has been answered by witness.)

A. I think I attended the sale at Mr. Horbach's instance, and I bought the property while I was at the sale.

Q. At his instance or not?

A. If attending the sale was the purchase at his instance, why it was at his instance. I do not presume that I would have attended the sale unless my attention had been called to the matter specially. No doubt he asked me to attend the sale and buy some property if it was sold cheap enough.

Q. Did you pay anything for this property to him as administrator?

A. I presume I did; I could only tell that by hunting up my checks.

Q. Will you hunt up your check and give it, or a copy of it, to the master?

A. If I can find it.

Q. Have not you a way to tell whether you paid anything for that property?

A. I might have if I can find the date of sale; it is more than probable it would be charged in the account. If I can get the date of sale, or about the date of the sale, my account would probably show.

Q. What, in your judgment, were these lots worth at the time you bought them; lots one (1) and seven, (7,) block nine, (9,) in Parker's addition to Omaha?

A. I do not remember, nor do I remember what I paid for the lots; I could probably tell what I paid by looking at that. I don't know what they are worth to-day.

Q. Did you ever see them before you bought them?

A. Only in a general way, as in that addition. I do not think I ever was on the lots before the time I bought them or since.

Q. What did Horbach say to you, if anything, about hav-
35 ing House and Kennedy buy in any of these lots at the sale or subsequently?

A. I don't remember that he said anything to me about that. I believe Mr. House was at the sale; I do not remember that Mr. Kennedy was.

Q. Do you swear that you ever paid anything in money to Horbach for the purchase of those lots?

(Objected to as leading by counsel for respondent.)

A. I will have to go and hunt up my books before I answer that question. I certainly got pay for them when I sold them.

Q. Who paid you?

A. Mr. Horbach.

Q. How; in check or money?

A. That I do not remember; most likely he gave me his check for the amount.

Q. What amount did you receive from him for them?

A. That I do not remember. I presume the deed will show.

Q. What the deed says was the true consideration?

A. I do not know; I know I got enough to reimburse everything I paid for them and to reimburse everything that John Parker, jr., owed us. I would have to see what I paid for the lots, and what Parker owed us. I think that is what I got from the property.

Q. Did he pay you the amount of Parker's claim? That is what you got.

A. Yes, that and the amount I paid for the property.

Q. Will you make a statement showing what you gave for these lots and when and what you received back from Horbach for the lots and how paid by him; whether by check or money?

(Objected to by counsel for respondent as immaterial, incompetent and not proper testimony.)

36 A. I do not know whether I can find all the facts you ask for; I will make a statement of all the facts I can find; I don't know whether I have a record of them or not.

Q. Did not Mr. Horbach tell you, or have some talk with you, about the time of the sale, or before, that he, being administrator of the estate, could not bid himself; do you remember any talk of that kind with him?

A. No; I don't remember that he told me anything of that kind; of course I presumed he could not, being administrator, bid in property himself.

Q. Did he not state to you that he had a conveyance of all the property that the old man fell heir to from the son, subject to the debts of Parker, jr.; and if not, what did he say about that?

(Objected to by counsel for respondent as irrelevant and immaterial.)

A. He may or may not have done so; I do not now remember such conversation.

Q. Did he say to you if you would buy in this property that he would see that the estate should pay the debt that Parker owed to yourself and your brother; what did he say?

(Objected to as leading, immaterial, irrelevant, and a repetition of the testimony already taken.)

A. I have no recollection in regard to his having made an arrangement to take up that paper of Mr. Parker's, but I presume the estate would have to pay it, as I believed there was property enough to pay it.

Q. Then, as I understand you, Mr. Kountze, you went there to buy this property on speculation, with no understanding or intimation of any kind from Horbach that he would make you whole or save you harmless if you should buy it; am I right?

(Objected to as leading and a repetition of former questions.)

37 A. Well, when I went to the sale I did not know whether I would buy any of this property or not, but I did buy a few lots at what I believed to be a low price for them, and, as I have already stated, with the expectation of being able to sell them, and

possibly that I might sell them to Mr. Horbach himself at the price I was paying.

Q. What made you think Mr. Horbach would want to buy them?

A. I did not know that he would buy them; I did not state that he would.

Q. You say possibly you might sell them to Mr. Horbach; what made you think so?

A. I had no special reason for thinking so except that he was interested in property in that vicinity, and was interested in this estate, and had made large advances to the estate.

Q. How did you understand that?

A. In a general way.

Q. What general told you?

A. No general; I probably inferred so from something that Mr. Horbach may have said to me; I have no recollection, however, that he did.

Q. How did you know; who told you?

A. I knew that Mr. Horbach and John A. Parker, jr., were very intimate friends, and that he, Parker, was in the habit of using his friends.

Q. When you came to convey this property back to Horbach, is it not a fact that he gave you just what you bid, putting in the claim that you had against Parker, jr., and the surplus, so as to make you entirely whole; neither more nor less?

(Objected to by counsel for respondent as leading.)

A. I presume I got for the property, when I sold it to Horbach, an amount sufficient to cover the amount that the property cost me, together with such sums as may have been due from Mr. Parker, jr.

38 Q. In other words, it made you whole, including that claim?

A. Including the money we had advanced to Parker.

Q. You never saw any of the property before you bought it, did you?

A. I undoubtedly saw the property, as I saw pretty much all the property around the town, but I made no special examination of it; I knew the general character of it.

Q. You had no talk with House or Kennedy, or both, about your bidding on that property?

(Objected to as leading, immaterial, and irrelevant.)

A. I have no recollection of any conversation with any of those gentlemen, but I undoubtedly did talk with them at the sale; I have no recollection what was said in regard to the matter; I do not now remember that Mr. Kennedy was present, but he may have been; I think Mr. House was.

Q. When will you look this matter up in regard to your purchase and your sale? Between this and next Saturday?

A. I will try to do it within a week.

HERMAN KOUNTZE.

Signed in my presence.

H. STULL, *Examiner.*

B. E. B. KENNEDY, recalled by complainant and examined in chief, testified as follows:

Q. I think you stated in your examination in chief that in the purchase of these lots you applied on the purchase what the estate owed you for attorney's fees; am I correct?

A. I stated in my examination in chief, in answer to a question, "Whose money in fact paid for the lots, or any part of them?" "The estate of John A. Parker, jr., deceased, was indebted to me for fees for legal services, and I purchased the property and offset it in settlement of my fees and charges for legal services against the estate."

39 Q. What was the amount of your account for services against the estate?

A. I do not recollect; I think it was about $150.00.

Q. What was the amount of the purchase of the lots?

A. I do not remember.

Q. Give your best recollection?

A. I have no recollection of the amount; the records of that sale in the district court will show exactly what it was.

Q. Did you pay the administrator the surplus over and above what the estate owed you in money?

A. I do not recollect the circumstances of the case enough to testify on it.

Q. Will you swear whether you did or did not?

A. I will state that I settled it in full and the records will, very likely, show how.

Q. The question is, Mr. Kennedy, did you pay the administrator anything by reason of the purchase of the lots over and above your fee in money?

A. My answer will be as stated, and I have no recollection of the particulars of the transaction, except as I have stated.

Q. Have you any means of ascertaining that fact?

A. Not here.

Q. Have you anywhere?

A. I don't know whether I have or not. I never looked to see.

Q. Do you think you could find out if you should look?

A. I presume the record of the transactions in the district court will disclose the fact, but I have not examined it since the date of the transaction.

(Here complainant objects to the unfair and unsatisfactory answer of the witness.)

Q. Can you ascertain by the examination of your papers whether you paid any money to the administrator by virtue of the pur-

40 chase of those lots or not, and if you answer that you think you can, will you do so?

A. I can ascertain the amount of the purchase by producing the deed or deeds that I received from the administrator, and I will produce them if the attorney for the complainant desires it.

Q. Do the deeds express the actual consideration paid?
A. I think they do.

B. E. B. KENNEDY.

Signed in my presence.
H. STULL, *Examiner*.

J. W. ROSE, a witness for complainant, being duly sworn and examined in chief by Mr. REDICK, testified as follows, viz:

Q. Did you buy a lot up in Parker's addition in the year 1874?
A. I bought a lot up there some time about that year.
Q. Did you bring your deed with you?
A. Yes, sir.
Q. Did you talk to Mr. Horbach lately concerning the purchase of this lot by you?
A. No, sir.
Q. Within the last month or two?
A. I don't know that I have.
Q. Through whom did you negotiate the purchase of the lot?
A. I bought it through Mr. Barnum; he first called my attention to it. He took me up in his vehicle to look at it.
Q. After showing the lot where did he take you then?
A. He took me back home.
Q. State whether or not he afterwards took you to see Mr. Horbach about the lot?
(Objected to as leading.)
A. No, sir; I don't think he did.
Q. Did you go yourself to see Mr. Horbach?
41 A. No, sir; not directly afterwards.
Q. How soon afterwards?
A. Along after I had made a payment or two I think Mr. Horbach came into the transaction, if he did come in.
Q. State whether at the time you bought you took a deed of the property?
A. Yes, sir; and gave back a mortgage.
Q. Where were the deed and mortgage executed?
A. I do not know where exactly; my business called me away from home a good deal, and Mr. Barnum attended to the matter more than I did; he brought me the deed.
Q. Are you sure of that?
A. I think he did.
Q. To whom did you make the first payment?
A. I think it was to Mr. House.
Q. Where was you when you paid it?
A. I think it was in the bank—in the state bank.
Q. In the state bank? Will you swear that you made a payment to him at the state bank?
A. No, I don't; but that is my impression.
Q. Did you pay in money or check?
A. I paid it in money; I had no bank account.

Q. Did you pay into the window of the bank?

A. Not that payment; no, sir.

Q. Whereabouts did he receive it in the bank; back room, front room, or over the counter?

A. In the back room of the state bank.

Q. How much was the payment?

A. I think I paid one hundred dollars—it might have been in two payments

Q. Where did you pay the second payment?

42 A. I made several payments in this way: I was working on salary and when I would get twenty or fifty dollars ahead I would go and pay it on this note.

Q. Who to?

A. Some to Horbach and some to House; I do not know that I ever did hand House any money.

Q. Is it not true that all the payments you made were in the state bank?

A. That I do not know; I was two or three years paying it.

Q. Where was you when you took up your deed and gave a mortgage; in the state bank?

A. I don't think I was in the bank at that time; I was down on corner some place; I remember going up to get them recorded.

Q. When you signed the mortgage where was you; in the back room of the state bank?

A. It is my impression I was; I don't remember.

Q. What did you pay?

A. $330 or $333, somewhere along there.

Q. Then you were three years, about, paying for it?

A. I guess so; Mr. Barnum told me I might have all the time I wanted.

Q. What is Barnum's first name?

A. I think it is Horace.

Q. Does he work in the shops still?

A. I believe he does.

Q. Did Mr. Horbach say anything about the back taxes on the lot?

A. Not at the time I bought it; the understanding was I was to have a clear warranty deed, and that satisfied me. Of course the deed would not be good without the taxes were paid.

Q. Did Barnum live close by the lot he wanted you to buy?

A. He lives quite a distance; when I bought he and I

43 were neighbors; he lived in the next house.

Q. Do you know John A. Horbach's handwriting?

A. I don't believe I do.

(It is admitted by the parties that the deed from J. E. House to J. W. Rose, except the words J. E. House and except the acknowledgment and signature, is in the handwriting of John A. Horbach; also the mortgage back from Rose to House.)

Cross-examined by Mr. KENNEDY:

Q. Did you at the time of making the deed and mortgage of this land know where Mr. House's office was?

A. I think it was up stairs over the bank on Farnam street.

Q. Were the papers executed in House's office or delivered there?

(Objected to on the ground that witness has already stated he could not tell where they were executed.)

A. I do not know whether they were or not; I do not think that they were.

Q. Do you remember where they were acknowledged?

A. The deed was acknowledged in the bank.

Q. Was that in the first national or in the state bank?

A. It was on the southeast corner of 13th and Farnam; it was Mr. Kountze's bank.

Q. Was not House's office over Kountze's bank?

A. That is my impression.

Q. Then what you said in your examination-in-chief as to the state bank was not correct?

A. I made a payment in there; the papers were acknowledged in Kountze's bank.

Re-direct examination:

Q. You went from the state bank across there and acknowledged the papers?

A. No; I said I made a payment in the state bank.

J. W. ROSE.

Signed in my presence.

HOMER STULL, *Examiner.*

44 T. W. T. RICHARDS, a witness for complainant, being duly sworn and examined in chief by Mr. Redick, testified as follows, viz:

Q. Were you acquainted with John A. Parker, jr., in his lifetime?

A. Yes, sir.

Q. Are you acquainted with John A. Parker, sr.?

A. Yes, sir.

Q. Do you know when John A. Parker, jr., died in this city? Do you recollect?

A. It was in March, 1871.

Q. State how long after his death you met or saw John A. Parker, sr.?

A. I could not state the exact time. I think it was after John A. Parker died that I telegraphed to the father and he came on here and was at the funeral.

Q. State what you know, if anything, about suit being brought against John A. Parker, sr., by one Basil Manley, just about the time he came here after John A. Parker, jr's. death?

A. Yes, sir; I was in that suit, I believe, with Mr. Kennedy.

Q. Do you recollect when Parker, sr., was served with process in that suit? Do you recollect his coming to your office with a certain deed conveying the lots in question, either with a deed or to get a deed made out. Please detail the circumstances and give the time, as well as you can, with reference to that suit, and the time when it was done, as near as you can.

A. I do not know what lots are in question.

Q. It is a portion of all the property that John A. Parker owned in Parker's addition; are you familiar with the property owned at that time by John A. Parker, jr.?

A. Yes, sir; we officed together, and I knew what property he had.

Q. This property is lots owned by John A. Parker, jr., and which John A. Parker, sr., became heir to by reason of his death?

45 A. It has been so long ago that I do not remember very distinctly about the transaction. To the best of my recollection, I prepared a deed.

Q. Covering what?

A. I think it covered John A. Parker's real estate.

Q. All here?

A. I think so. I suppose the deed is on record and will show.

Q. At whose instance—who requested you to prepare it?

A. Mr. Horbach and Mr. Parker came to my office together; that is my recollection of it.

Q. What time in the day was that; do you recollect?

A. It was in the evening about 8 o'clock.

Q. What evening?

A. I could not tell you what evening it was.

Q. Had John A. Parker, jr., been buried at that time before he came to your office?

A. I think so.

Q. How long before? Do you know? The afternoon before?

A. I could not tell how long before; I think Parker staid here about a week after he came here.

Q. Were they not anxious to have a deed prepared immediately, and did they not both appear somewhat excited from the bringing of the Basil Manley suit?

(Objected to as leading.)

Q. State how they appeared in that regard.

A. I do not know how anxious they were; they did not seem to be excited. Mr. Parker had the summons in the Basil Manley suit with him at the time.

Q. Did he have the attachment papers?

A. No; I don't think there was any attachment papers I think he brought the summons with him, and said he wanted me to attend to it. He probably laid the summons on my table.

46 Q. Was the Basil Manley suit an attachment suit?

A. Yes, sir.

Q. Did it attach this property?

A. It attached a large part of the property. I don't think it attached it all.

Q. Do you know when they applied for the making of the deed; whether the property had been attached?

A. I do not.

Q. Do you recollect whether it was on Monday night or Saturday night of the week that this application was made to you to draw the deed?

A. My recollection is that Parker got here on Sunday and John A. Parker, jr., was buried, I think, the day after he got here. How soon after this deed was prepared I do not know.

Q. What did Horbach say, if anything, on that occasion about being ready in the morning to put it on record as soon as the clerk come in?

A. It has been so long ago I cannot remember the conversation.

Q. Did you see any consideration pass between Parker and Horbach for the conveyance of these lots?

A. No, sir, not in my presence.

Q. Is it not a fact that Horbach was to be down early the next morning and get that deed on record for the purpose of defeating any lien that Basil Manley might put upon the land?

(Objected to as leading.)

A. I don't know what the fact was, or whether there was any understanding. It has been a good while ago, and it is hard to remember more than a general outline.

Q. Were you familiar with the value of lots up in Parker's addition in 1873?

A. Yes, sir; tolerably familiar.

Q. Have you sold lots up there?

47 A. I owned lots up there from the time the addition was laid out to 1876, when I sold the last I had.

Q. What was the value of block 4? Do you know where that is?

A. That is the north tier of blocks, I believe.

Q. What was the fair cash value of lots in block four in 1873?

A. $250.00.

Q. In block six and seven?

A. About $300.00.

Q. In block eight?

A. About $275.

Q. How do you arrive at this valuation?

A. I think that was the fair market value.

Q. State whether or not you sold property in that addition at that time?

A. No, sir; I don't think I sold any in that addition at that time. I sold six lots in block fourteen in 1875 or 1876 for twenty-one hundred dollars.

Q. Would those lots be of the same valuation as the others?

A. About the same; they may be worth a little more than these others.

Q. Was property higher there in 1875 than in 1873?

A. I think not.

Q. State whether or not you prepared that deed that night and had it acknowledged that night, and if so, who took the acknowledgement, if you recollect?

A. I prepared that deed for them when they came in, and Mr. Horbach said they would have Mr. Hughes acknowledge it; when the deed left my office it was not acknowledged; that is my recollection; I prepared the deed; they said they guessed Mr. Hughes could acknowledge it.

Q. At whose house was the funeral held of John A. Parker, jr?

48 A. At Mr. Horbach's.

Q. What became of the Basil Manley suit?

A. It was dismissed by the United States court on demurrer to the jurisdiction.

Q. Who paid your fees, if they were paid at all?

A. Mr. Horbach.

Cross-examined by Mr. KENNEDY:

Q. In your testimony concerning the Basil Manley suit, you have referred to an action commenced in the United States court, have you not?

A. Yes, sir.

Q. That suit was dismissed when; about what time?

A. I think it was dismissed at the November term of the court for the same year. We filed a demurrer to the petition raising the question of the jurisdiction, and Judge Dillon sustained the demurrer and dismissed the suit.

Q. That was a mere action by the issuance of a summons, was it not?

A. No, sir; that was an attachment.

Q. Was the suit in the federal court an attachment?

A. They were both attachment suits, in the federal and in the state courts.

Mr. REDICK. For the same cause of action?

A. I was not employed in the state court; my impression is that it was the same cause of action.

Mr. KENNEDY. You have testified concerning the value of property in Parker's addition; have you ever examined the lots in question?

A. I have not. I know the general lay of all the property in the addition.

Q. What is the distance from the lots you say you sold in 1875 to this lot that your attention has been called to in this examination?

49 A. Block eight is one block north; block seven is one block north and across the street east; block four is two blocks north and across the street west.

Q. Is it not a fact that property in that addition was enhanced in value by the building of the street railway and running the cars up there?

A. I suppose it has been enhanced in value by it some.

Q. The street railroad was built up there before you made the sale?

A. I cannot remember; but I don't think it was. I cannot remember.

Q. How was that sale you refer to, a cash trade?

A. Cash and notes secured by mortgage on the property.

Q. What portion cash?

A. The whole sale was two thousand one hundred dollars; one-fourth cash, balance in one, two, and three years at 10 per cent. interest.

Q. Do you know of any other sales of property there in 1873 in that immediate vicinity?

A. I do not remember dates; but I know there have been sales there.

Q. You cannot recollect as to the sales in 1873?

A. No, sir.

Q. Were you dealing in real estate in 1873?

A. Not as agent.

Q. Did you as dealer?

A. I was trying to sell what I had out there, seven lots.

Q. When did you sell what you had?

A. I don't know when I sold, or whether it was prior to 1873.

Q. When did you purchase them?

A. I bought them of John A. Parker in 1870.

Q. Lots were a good deal higher then than they were subsequently?

A. Yes, sir; I paid $2,700 for those lots myself.

50 Q. And sold them for $2,100?

A. Yes, sir; but I have forgotten what I paid for the eleven lots.

Q. Now, is it not a fact that in 1873 there was no demand for the purchase or sale of property in that part of that addition?

A. I don't think there was much demand for property anywhere in Omaha at that time.

Q. Did you know of the sale of property belonging to Parker's estate at that time?

A. I did; yes, I remember the property being sold.

Q. Did you attend the sale?

A. I remember being there, but I did not stay there.

Q. You did not think there was much money in it, did you?

A. At that time I had no money to buy; I was trying to sell.

Q. Suppose you had money to invest, would you have considered it an object to purchase at that time, at figures you have named, lots in that addition?

A. I don't think, as matter of speculation, I should have invested at those figures.

Re-direct examination:

Q. Then, as I understand you, there were two attachment suits commenced at the time you prepared the deed?

A. No, sir; there was only one suit commenced at that time; after that a suit was commenced in the state court by Ambrose; I always supposed for the same cause of action.

Q. You state you owned seventeen lots in that addition; state how those seventeen lots compared in value with lots four, five, and six, in block seven and eight?

A. Those seventeen lots were somewhat more valuable than these blocks.

Q. How much?

A. There is not a great deal of difference; they lay on the plateau; the only difference would be the nearness to the town.

51 Q. What did you sell the other eleven for; do you remember?

(Objected to as immaterial.)

A. I do not remember exactly; my best recollection is $3,500 for the eleven.

T. W. T. RICHARDS.

Signed in my presence.
H. STULL, *Examiner.*

WILLIAM F. HINES, a witness for complainant, being duly sworn and examined in chief by Mr. Redick, testified as follows, viz:

Question. Are you the treasurer of this county?
Answer. I am, sir.

Q. Look at the statement made by you, (paper shown the witness) and state whether that has been taken from the books of the county treasurer?

A. It is, sir; to the best of my knowledge and belief.

Q. State who paid the taxes on lots described in that statement for the year 1873?

A. The parties whose names appear opposite here "by whom paid"; in 1873 John A. Horbach paid taxes on a portion of them; J. E. House, J. E. Bradley, and B. E. B. Kennedy, as shown by the statement; in 1874 Sallie Horbach, J. E. Bradley, J. W. Rose, Geo. W. Crager, and others, as shown by the statement; in 1875 Sallie Horbach, J. E. Bradley, H. Jones, J. W. Rose, and others, as shown by the statement.

(Complainant offers in evidence the statement referred to by the witness. It is objected to as immaterial, incompetent, and not the best evidence. It is hereto annexed, marked "Exhibit A.")

Cross-examined by Mr. KENNEDY:

Q. You know nothing about this personally, except as you find it on your books?

A. That is all.

52 Erasures and alterations were made after statement left my hands.

WM. F. HEINS.

Signed in my presence.

H. STULL, *Examiner*.

SAMUEL G. MALLETTE, a witness for complainant, being duly sworn and examined in chief by Mr. Redick, testified as follows, viz:

Q. State what position you hold.

A. City treasurer.

Q. Look at that statement (paper shown the witness) and state whether or not that is a correct transcript from your books.

A. Yes, sir; we checked it up to-day.

Q. Who paid the tax on lots 8, 9, 10, 11, 12, 13, and 14, in Parker's addition, for 1873, 1874, and 1875?

A. The books show that in 1873 and 1874 they were sold by county treasurer and paid by John A. Horbach for 1875.

Q. What name appears on your statement?

A. The name of John A. Horbach on these lots for 1875.

Q. Does the same hold good wherever the name of John A. Horbach appears?

A. Yes, sir.

(Here complainant offers in evidence the statement referred to by witness. The testimony of the witness and the statement offered is objected to by respondent as immaterial, irrelevant, and incompetent.

The statement is hereto annexed marked Exhibit "B.")

S. G. MALLETTE,
City Treas.

Signed in my presence.

H. STULL, *Examiner*.

53 OMAHA, *April* 21, 1879.

The taking of testimony was resumed. Present: the same counsel; J. I. Redick, for complainant; B. E. B. Kennedy, esq., for respondent.

(Complainant offers in evidence certified copy of judgment in case E. B. Hill *vs.* John A. Parker, sr., and others in case No. 124, doc. P. district court of Douglas county. Objected to as immaterial, irrelevant and incompetent. It is hereto annexed, marked Exhibit "C.")

(Complainant offers in evidence certified copy of deed from John A. Horbach as administrator of estate of John A. Parker, jr., deceased, to B. E. B. Kennedy, dated Jan. 15, 1874, of portion of lots in question. Objected to as immaterial, irrelevant, incompetent and not properly certified. It is hereto annexed, marked Exhibit "D.")

(Complainant offers in evidence certified copy of deed from B. E. B. Kennedy and wife to John A. Horbach, dated Mc'h 23, 1875, of portion of lots in question. Objected to as immaterial, incompetent

and irrelevant and not properly certified. It is hereto annexed, marked Exhibit "E.")

(Complainant offers in evidence certified copy of deed from John A. Horbach as administrator of the estate of John A. Parker, jr., deceased, to J. E. House of a portion of the lots in controversy, dated Jan. 15, 1874. Objected to as incompetent, irrelevant, immaterial and not properly certified. It is hereto annexed, marked Exhibit "F.")

(Complainant offers in evidence certified copy of deed from J. E. House to John A. Horbach of portion of lots in controversy, dated 21st day of Jan'y, 1875. Objected to as immaterial, incompetent, irrelevant and not properly certified. It is hereto attached, marked Exhibit "G.")

54

(Complainant offers in evidence certified copy of deed from John A. Horbach, administrator of estate of John A. Parker, jr., deceased, of a portion of the lots in controversy to Herman Kountze, dated Jan'y 15, 1874. Objected to as immaterial, irrelevant, incompetent, and not properly certified. It is hereto annexed, marked Exhibit "H.")

(Complainant offers in evidence certified copy of deed of portion of lots in controversy, from Herman Kountze and wife to John A. Horbach, dated Dec. 18, 1874. Objected to as immaterial, incompetent, irrelevant, and not properly certified. It is hereto annexed, marked Exhibit "J.")

(Complainant also offers in evidence report of sale in case No. 233, docket K, in district court of Douglas county, filed Nov. 28, 1873; also report of sale in said case, filed Feb'y 25, 1874. The first report is objected to as immaterial and irrelevant; the second report is objected to unless the whole of said report is received in evidence. The said reports are hereto annexed, marked Exhibits "K" and "L," respectively.)

(Complainant offers also the petition in said case. It is objected to as immaterial and irrelevant. It is hereto annexed, marked Exhibit "M.")

GEORGE H. CRAGER, a witness for complainant, being by me duly sworn, testified as follows, viz.:

Q. Did you buy a lot in Parker's addition to the city of Omaha about July, 1874?

A. I did buy a lot about that time.

Q. Who first called your attention to this purchase?

A. Mr. Barnum—I think it is H. W. When we were about to close the negotiations Mr. Barnum stopped at the house with a buggy, and took me up over the First National Bank; Mr. Horbach was there, and Mr. Horbach said——

55

(Counsel for complainant objects to what Horbach said.)

Q. What did he do when he got to the First National Bank; who did you see there?

A. Mr. Horbach; we went from there to Mr. House; he was in Central block.

Q. At the time you saw Horbach over the First National Bank did you speak to him about the purchase of the lot?

(Objected to as leading.)

A. I don't think anything of that kind was mentioned, but I won't be positive for the reason that Barnum and I had a talk over that matter and I understood the price.

Q. State whether or not you and Horbach did not talk about the terms of the mortgage and the price?

A. I don't that was mentioned, but I would not be positive.

Q. Did not you state to me yesterday evening in front of my office, that you made the bargain with Horbach for the purchase of the lot?

A. Not with Horbach.

Q. I mean by that, did you talk over the terms of the bargain?

A. I could not say such a thing as that; there may have been, but I doubt whether there was anything of that kind mentioned.

Q. Did you not say so to me?

A. No; if you understood it so you are wrong.

Q. State whether or not you learned the price and terms of the lot from Mr. House?

A. No; from Mr. Barnum.

Q. Then you learned nothing about the price from Mr. House when you got there?

A. No; he seemed to understand all about it; Horbach did not say much about it; he merely introduced me to House; I could not say positively to House or Horbach.

56 Q. Did you pay in money or in check?

A. In money.

Q. Where?

A. That must have been at the office where House was.

Q. Where did you get your deed and where execute your mortgage?

A. In the office where House was.

Q. Where did you get your deed?

A. I am not positive; I cannot state.

Q. What is your best recollection, if you have any recollection? State whether or not the deed and the mortgage were drawn in House's office?

A. I am inclined to think it was, but I am not certain.

Q. To whom did you pay the balance of the purchase-money after the first payment, to House or Horbach?

(Objected to as immaterial.)

A. I think the second payment was paid at the bank at 13th and Farnam—the State Bank.

Q. To whom?

A. I am inclined to think it was to Horbach; I won't be positive.

Q. In money or check?

A. Money.
Q. Was the third payment paid to him?
A. The third is paid to Mr. Horbach.
Q. Were there back taxes on this lot at the time you bought it?
A. No, sir; not that I know.
Q. What did Horbach say, if anything, about the taxes?
A. I don't know Mr. Horbach said anything about it.
Q. What did Mr. House say, anything?
A. No, sir.

Q. You had no negotiations with House?

57 A. No, sir; I would add this to what I said in connection with the last payment; my business was such it was almost impossible for me to get to Mr. House's office in the day time. When I called in the evening Mr. Horbach would receive it; I don't know whether it was a favor to Mr. House.

Q. Have you talked with Mr. Horbach about this matter since I saw you last evening?

A. I saw Mr. Horbach to-day, but I must think for a moment to see whether there was any conversation touching that point. Yes, sir, in this way——

Q. Was it after you was subpœnaed?
A. No, sir.
Q. Before?
A. Yes, sir, and what passed I might as well tell it.

Q. No, sir, I don't ask what was said. Is that the mortgage executed by you back on the property you purchased? (Paper shown witness.)

A. Yes, sir.

Q. Will you allow the master to take and attach it to your deposition?

A. No, I don't like that.

(It is here admitted by the parties that the mortgage here alluded to is in the handwriting of John A. Horbach. The mortgage is from George H. Grager to J. E. House on lot 10, in block 8, Parker's addition to Omaha, dated July 3, 1874.

It is admitted that the deed from House to Crager of the same lot, same date, is also in Horbach's handwriting.)

GEO. H. CRAGER.

Signed in my presence.

HOMER STULL, *Examiner.*

J. E. HOUSE, a witness for complainant, being duly sworn

58 and examined in chief, testified as follows, viz:

Q. Have you got any new light on the subject of how you paid for these lots since your last examination? If so, state what it is.

A. I have looked through my papers, but I find no check, nor anything. It was paid by check, I know that very well; but I do not find the check. I think probably I stated the amount as being

a little in excess, or some in excess of what it was. I said between twenty-eight hundred and three thousand. I think it was between twenty-four and twenty-five hundred, somewhere in that neighborhood, as near as I can guess at it now.

Q. Don't you keep track of the checks you pay out?

A. I do, certainly, for a time. Two or three years ago I destroyed some of my papers.

Q. State whether you do not keep a memorandum of checks on the bank?

A. I do.

Q. Where do you keep it; in a book?

A. In a stub on the check book.

Q. Have you looked to find the stub on this check?

A. I have.

Q. And you cannot find it?

A. No, sir.

Q. Do you find other checks about that time?

A. No, sir.

Q. Have you since found out the name of the man that negotiated the sale of the lots or part of the lots?

A. His name is Barnum.

Q. Did you make a deed to him?

A. No, sir; I did not.

Q. I mean to the man who bought the lot?

A. I did deed to the man who bought the lot. I do not recollect his name now.

59 Q. Did you ever see the man?

A. I did, sir.

Q. Did you make a bargain with him yourself as to how he was to pay for it?

A. No, the lot was sold through this man Barnum and I agreed to the terms that he had made.

Q. Will you swear that you received any of the consideration?

A. I think I did.

Q. Do you know the amount?

A. I do not recollect the amount.

Q. Was not the man's name George H. Crager?

A. I could not state.

Q. Do you recollect whether you bought these lots subject to taxes or not?

A. I do not, sir.

Q. The question is whether you bought all these lots at public sale subject to taxes or not?

A. I do not remember.

Q. You stated before in your examination you thought you paid taxes on them; for what year did you pay the taxes; state if you recollect?

A. I think for the year 1874.

Q. You bought in 1873?

A. I believe so. That is a matter of record. I have not looked the thing up to see.

Q. Did you pay any more than one year's tax?

A. I do not recollect; I think not; that is after I came in possession of the property.

Q. Did you pay taxes on all the lots you bought?

A. That I don't know.

60 Q. How did you pay that, in money or by check, do you recollect?

A. I do not.

Q. You did not find any account of that in looking through your papers?

A. No, sir.

Q. I understand you have nothing to show, in the transaction of the purchase of these lots, as to how you paid for it, or how you paid the taxes, except from recollection?

A. I have not been able to find anything.

Q. Do you recollect what you paid at the public sale for lot number ten, in block eight, Parker's addition?

A. I do not.

Q. Can you approximate to it?

A. I do not know that I can.

Q. Can you give a fair guess, judging from its present value, as to what you paid at the time?

(Objected to as leading and immaterial.)

A. No; I don't know anything about its present value.

Q. Judging from its value at that time, can you not give an approximate and reasonable guess as to what you paid?

(Objected to as leading and immaterial.)

A. No; I could not.

Q. Do you know what Barnum had bargained it away for, to which you afterwards consented; that is, for how much?

A. I do not recollect; that is matter of record—that is, what the lot sold for.

Q. Who drew the deed that you signed to that lot?

(Objected to as immaterial and irrelevant.)

A. I do not know.

Q. Did you draw it?

(Objected to as immaterial and irrelevant.)

61 A. I may have done it; I do not recollect.

Q. You say you drew a check for the amount of the purchase money of those lots; on what bank was it drawn?

(Objected to as immaterial.)

A. On the First National.

Q. Have you looked there to see the amount of the check, or its date?

(Objected to as immaterial.)

A. I have not.

Q. Was the check dated at the time you got your deed?

(Objected to as immaterial.)

A. I think it was. I think it bore the same date or about the same date.

Q. Do you recollect who the check run to?

A. My impression is that it run to Mr. Horbach as administrator.

Q. How long before that public sale had you bought any property in Omaha of any account?

(Objected to as immaterial and irrelevant and for the reason that the witness has been once examined upon this subject by the complainant and dismissed.)

A. About three years.

Q. To what extent did you purchase property, in value, three years before?

(Objected to as immaterial and irrelevant.)

A. I bought some property in Shinn's second addition, I think it was.

Q. What was the extent of the purchase, about?

A. I do not recollect; somewhere in the neighborhood of one thousand dollars.

Q. Have you bought any property in Omaha since this public sale; if so, to what extent?

(Same objection; also that the witness has already answered
62 the question.)

A. I have answered that once before; I think not, sir.

The cross-examination of the witness is waived.

HERMAN KOUNTZE, a witness recalled on the part of the complainant and examined by Mr. Redick, testified as follows, viz.:

Question. Do you recollect the question I asked you when you testified before?

A. I think you asked me to look up what I paid for the property when I bought it, when I sold it, and what I got for it, etc.; I think that was about the substance of it.

Q. Have you examined your papers, books, etc., and are you able now to answer the questions that were put to you at your former examination?

A. I made an examination of my account, and I did not find the papers that you asked for there; you asked me to produce the checks that we gave for the property.

Q. Then you are unable to tell just how you paid for the lots?

A. I have no memorandum and no date by which I can fix the exact amount I paid except by guessing at it.

Q. Do you not keep an account of all your other transactions?

A. As a rule, I do keep an account.

Q. What is the reason that you have not got a memorandum of this transaction?

A. I do not know that I can give any special reason for it, except that I did not find it.

Q. At the time John A. Parker, jr., died, did not A. and H. Kountze hold his note for one thousand dollars?

A. No, sir; I think it was for one hundred and fifty or two hundred dollars.

Q. Did you file that claim with the administrator?

A. I am unable to answer that; I spoke to the administrator about the claim, but whether I made any filing of the claim in his
63 office I do not know.

Q. Did you receive from the administrator the full amount of that claim with interest?

A. Not from the administrator.

Q. Is it still owing to you?

A. No, sir.

Q. Has it been paid?

A. When I sold the property to Mr. Horbach I sold it for an amount sufficient to cover the debt I carried against Parker, and I destroyed the note.

Q. Is it not a matter of fact that there was some talk or understanding between you and Horbach that should be the arrangement if you would buy those lots?

A. No, sir; I think not.

Q. Will you swear there was no such talk as that?

A. I do not remember that there was any such talk that he was to take up that paper if I bought the lots.

Q. I do not ask you to answer whether that was the exact words; I do not ask you to state any exact conversation with Mr. Horbach, but my question is whether there were not conversations or an understanding between you and him that that should be the arrangement, or something of that kind, to induce you to make this purchase?

A. I think not.

Q. If it should turn out that you did not file that claim with the administrator, why did not you?

(Objected to as immaterial, irregular, and leading.)

A. I am unable to answer; I don't know but the claim was filed; if I did not I should say it was matter of neglect, but the chances are that it was, because I got a partial payment from him on it once—a dividend.

64 Q. You filed a claim of one hundred?

A. If I filed a claim of one hundred dollars I presume that was the claim; I had a recollection of once receiving a dividend from him on the claim.

Q. At the time you bought these lots, did you buy them subject to taxes or not?

A. I believe I did. I think there were some taxes on it that I subsequently paid.

Q. Do you recollect for what years you paid taxes?

A. I do not.

Q. Did you pay taxes upon them for more than one year?

Q. I presume I did. I presume I had to redeem the back taxes. That is a custom I have in buying property to clear up everything that is back of it.

Q. You say while you owned the lots you paid taxes upon them?

A. I think I did; I would have to look at the record.

Q. If it turns out that you did not pay taxes upon them, how do explain that—that Horbach paid them?

A. It would be contrary to my custom. I think I paid them.

Q. Did you have any recollection of the check coming into your bank to the administrator for the purchase of lots about that time?

A. No.

Q. If such a check had been drawn upon your bank, would not your books show it?

A. No, sir; probably not. The books would show only the number and the amount; the checks are delivered at the end of the month. If the checks are not numbered, possibly the journal would show it.

Q. How long after you bought these lots at public auction before you bought any property in Omaha?

65 A. That would be impossible for me to say.

Q. You have not bought anything for years?

A. I have bought more or less property at sales.

Q. Well, state as near as you can.

A. I could not answer that without going to look it up. We buy property more or less at sales.

Q. Will you state whether you are buying property except at mortgage sales growing out of your bank transactions?

A. No, not often.

Q. Buying it through public sales in which you are not interested?

A. I think I have, but not as a rule.

Q. State as near as you can to what extent either before that time or since.

A. I do not know that I can give you any particular instances. I would have to go back and look up my books.

Q. Are they not rare?

A. We are not buying a great deal of property.

Q. Did you buy a great deal of property before this public sale of Horbach's?

A. Probably not quite recently before that.

Q. Did you buy any immediately after that?

A. I have no particular purchase in my mind.

Q. Don't you know about Sallie Horbach having a tax title upon this property which you bought?

A. No, sir; I don't remember anything about it now.

Cross-examined by Mr. KENNEDY:

Q. In your testimony-in-chief taken the other day you said, in answer to the question, "Is it not a fact that you bought the property at the instance of Mr. Horbach?" "I think I attended the sale at the

instance of Horbach." Please explain what you mean by that answer—that you attended the sale at the instance of Horbach.

66 A. By that I would mean that I think my attention was called to the sale by Mr. Horbach.

Q. Was there any agreement or understanding between you and Mr. Horbach that you was to buy any particular property or any property at that sale?

A. I think not.

Q. Are you not in the habit of buying property at public sales where you have an interest to protect?

A. I bought a great deal of property where I had a direct interest.

Q. You had a claim against the estate of John A. Parker, jr., I believe?

A. Yes.

Q. To what extent, if any, did that influence you in attending the sale and purchasing the property?

A. I have no doubt that was one reason why I attended the sale, because I had an interest in the matter in that transaction.

Re-direct examination:

Q. When you conveyed back to Horbach the property, I believe you stated that he paid you back just exactly what you paid in addition to the claim you had against the estate in full; am I correct?

(Objected to by respondent as improper re-direct examination, and also for the reason that it misstates the testimony of the witness upon his former examination.)

A. My recollection is Mr. Horbach paid me for the property an amount covering everything that I was out, including taxes and interest and the Parker claim in full.

H. KOUNTZE.

Signed in my presence.

H. STULL, *Examiner*.

67 Counsel for complainant offers in evidence a part of the files in No. 124 P, in the case of Edward B. Hill *vs.* John A. Parker, sr., in the district court for Douglas county, Nebraska, being a petition or affidavit for an attachment, the order of attachment, the proof of publication, the summons, the affidavit for publication, the appraisement, the motion to amend the record, motion to confirm the sale; and also gives notice that he will introduce and file with the examiner a copy of the judgment taken in this suit, and all the files in the case, to be read upon the hearing.

Mr. KENNEDY. Are the papers specified to the examiner all the papers that the complainant proposes to introduce as the record of the case referred to?

Mr. REDICK. I do not know; I will see; I am not the witness on the stand.

(Counsel for respondent objects to the admission of the papers offered by complainant as irrelevant, immaterial, and incompetent.)

Counsel for complainant offers in evidence the files in the case in the matter of John A. Parker, jr., deceased, and gives notice he will read the same on the hearing, being the files in the probate court in said case, to wit, the warrant and inventory, the claim of John A. Horbach, the administrator's account, the schedule of claims, the petition for the discharge of the administrator, and also the original deed of the property in question from Alfred Burley to Edward B. Hill.

(Counsel for respondent objects to their admission as incompetent, unless the files and records of the probate court in that estate are offered.)

Plaintiff offers in evidence deed from Horbach to Kennedy, dated June 9, 1874. Objected to as being testimony-in-chief and not
68 in rebuttal. It is hereto annexed, marked Exhibit "P." Plaintiff offers deed from John A. Parker, sr., to John A. Parker, jr., dated Sep. 17, 1870. Objected to as being testimony-in-chief and not in rebuttal. It is hereto annexed, marked Exhibit "Q." Plaintiff offers deed from B. E. B. Kennedy and wife to J. A. Horbach, dated Dec. 28, 1874. Objected to as being testimony-in-chief and not in rebuttal. It is hereto annexed, marked Exhibit "R."

Plaintiff offers certificate of the clerk of the United States court showing that a certain suit was commenced against J. A. Parker, senior, by Basil Manly, junior, on the 18th of March, 1871.

Objected to as immaterial and incompetent testimony which should have been offered in chief, and is not admissable in rebuttal. It is hereto attached, marked "Exhibit S."

Plaintiff offers in evidence a certificate of the clerk of the district court for Douglas county, showing the time when a certain other suit was commenced by Basil Manly *vs.* John A. Parker, senior, on which was rendered a judgment, the amount of the judgment, etc.

Objected to as immaterial and incompetent, and not proper in rebuttal. It is hereto attached, marked "Exhibit T."

JOHN I. REDICK, a witness for plaintiff, being duly sworn, testified as follows, viz:

I have been well acquainted with John A. Horbach for twenty years, and I know that he and John A. Parker, senior, and John A. Parker, junior, have been intimate friends, and mixed up in business together in Washington and here. Mr. Horbach had a preemption which underwent a long and tedious litigation, and Mr. Parker was one of the government land commissioners, and throughout the matter helped and sustained Horbach.

I will state that on Friday of last week I saw T. W. T.
69 Richards and asked him if he would give testimony in this case as to who drew the deed from John A. Parker, junior, to Horbach, of this property, when, and at the time what was said by Horbach. He said he would give testimony and would swear

that Horbach came in with Parker, he thought, on the night of the 18th of March, 1871, and he prepared the deed, Horbach saying that he would come down on Monday morning early and have the deed put on record early before any attachments could be levied on Parker's property. I called on Richards this morning to come in and give his testimony, and he refused unless I would divide the fees with him in case I should win.

(Defendants object to the first part of the testimony given by the witness Redick, for *that* reason that it is not proper rebutting testimony, and also object to that part of his testimony relative to his conversation with T. W. T. Richards as being irrelevant and immaterial to the issues in this case.)

JOHN T. REDICK, recalled for plaintiff, testified as follows, viz:

I will state that I have been dealing in real estate for the past 20 years as extensively as any one man in Omaha during that time.

(Objected to as not rebuttal.)

The WITNESS: I consider that I was in 1873, and am now, well posted in the value of real estate all over the city.

(Objected to on the ground that testimony as to value of the lands is immaterial and irrelevant to the questions at issue in this case.)

The WITNESS: During the year 1873 I sold a large amount of property in the city; I have in my mind now two pieces that I sold for ten thousand dollars that to-day would not sell for three thousand dollars.

(Objected to as incompetent.)

70 The WITNESS: Property in the 1873 in Parker's addition, and generally over this city, was as high as it was in 1871 or higher. While it is true the panic came in the fall of 1873, it had not its impression upon real estate for some two or three months afterwards—that is a perceptible effect—but until after that panic came property was higher than it had ever been in this city, and those lots in Parker's addition in 1878 were worth as much or more than they were in 1871, and if proper effort had been made, in my judgment, they would have sold for as much.

Cross-examined by Mr. KENNEDY:

Q. What property do you refer to; that you sold in 1873 for ten thousand?

A. My impression is that I sold the property lying east of Milton Rogers to Ezra and Joseph Millard in that year; although I may be mistaken in regard to that property, but I know I sold a good deal of property that year.

Q. State any other property you sold that year by giving a description of its location?

A. I could not give a description without looking on the records; I sold about that time, it may have been in 1874, to Rustin, his house on Harney street.

Q. In what year?

A. In 1873 or 1874.

Q. What price did you sell that for?

A. Ten thousand.

Q. How was it paid?

A. Five thousand in money; and I took a house and lot of him at five thousand, and he was to pay me five thousand to boot; I bought the place where I now live, on 23rd street, in 1873.

71 Q. What property do you mean that you sold or traded to the Millards, east of Rogers?

A. East of Milton Rogers.

Q. Where?

A. Where he lives, though I might be mistaken about the time. It may be earlier I sold Mr. Wilbur his house for nine thousand dollars, but that may be in 1872. I may be mistaken about the time when I sold that.

Q. The property you sold to the Millards is east of Milton Rogers' residence?

A. Yes.

Q. Give a description of it.

A. I cannot do that.

Q. What property did you own east of Milton Rogers' house?

A. I owned it all down to your fences. It is north, not east.

Q. What did you get for the property you sold to Millard?

A. I sold to Morrow and Millard about the same time and they paid about the same price; that was five thousand dollars a lot. The lots were one hundred feet front. I think I sold three hundred feet.

Q. At ten thousand dollars?

A. Yes, sir.

Q. How did they pay?

A. Omaha and Northwestern railroad stock, which Mr. Kountze paid me money for dollar for dollar. It was not stock but interest in the road.

Q. When did Kountze pay you the money?

A. Right away after I bought it.

Q. You say it was in 1873?

A. I think it was in 1873; I don't remember exactly.

72 Q. Don't you know it was in 1870?

A. No it was not.

Q. Was it later than 1871?

A. I would not swear it was or was not; but I am speaking of that sale that I made.

Q. Now if it should turn out to have been in 1870 or 1871, your testimony would be wrong as to value?

A. It would be wrong as to value of those pieces; I think that was 1872; it might be in 1871.

Q. That was two or three years before the panic?

A. Yes, sir.

Q. Is it not a fact that property was then at its highest stage?

A. No, sir; it was going up; property was never so high in this city as it was in 1872 and 1873.

Q. Don't you know that there was no purchaser at forced sales in 1872 and 1873?

A. I don't speak of forced sales; people at forced sales mistrust the title.

Q. Don't you know it was universal at forced sales property had to be purchased by the mortgagee?

A. I object to that; I don't speak of forced sales.

Q. This property you sold was improved property?

A. It was, of course.

Q. Is it not a fact all this property in Parker's addition was unimproved?

A. There is no dispute about that; when I speak of selling this property which was improved, I speak with reference to the large prices they brought; I have improved property to-day in this city that I paid five thousand dollars for, that I cannot sell for twenty-five hundred.

Q. Did you at that time buy or sell any property in Parker's addition?

73 A. No, sir; I never owned a lot in the addition.

Q. Did you negotiate any sales in that addition?

A. I don't know I did.

Q. What is the distance of this addition from the court-house?

A. Perhaps a mile and a quarter; the map will show.

Q. In all these sales you made it was a trade more or less?

A. No, sir.

Q. State when it was a clear cash sale?

A. I cannot state when, but I think I made a dozen.

Q. Did you not exchange property with Milton Rogers?

A. I did.

Q. You exchanged with Millard?

A. Yes, sir.

Q. And took railroad stock?

A. It was no stock; it was an interest; it was money he put into the road.

Q. Did you not have certificates for stock?

A. No; I got a certificate showing how much money I put into the road; how much I was entitled to.

Q. Do you know of your own knowledge of any cash sales by anybody at that time?

A. No, because it was wrapped up so it could not be sold.

Q. I am not speaking of this property.

A. I am speaking of this property.

J. I. REDICK.

Signed in my presence.

H. STULL, *Examiner*.

74 JOHN A. HORBACH, recalled for defendant, testified as follows, viz:

Q. State whether you were acquainted with B. E. B. Kennedy, J. E. House and any others, if there may be, who were purchasers of the lands, and present at the sale of the lands in controversy under the order of sale issued by the district court of this county?

A. I am acquainted with the parties named who *was* present at that sale.

Q. State what was the fact as to whether or no there was any understanding or arrangement of any kind whatever between yourself and any of these purchasers for buying in any of these lands for your use or benefit at that sale?

A. I had no arrangement or agreement or understanding with any person who purchased at that sale to purchase for me or in my interest.

Q. Have you read the allegations of the complaint in this case relative to such purchases being made in your behalf?

A. I am not sure whether I read them, but I heard them read by Mr. Kennedy, my attorney.

Q. You may state whether or no there is any truth in those allegations.

(Objected to as incompetent and leading.)

A. There is no truth whatever in any of the allegations, so far as they charge that I was an interested party in those sales; I don't remember what other allegations are set up.

Q. Let me ask you whether you have read or heard read the testimony of the witness Rose, given in this case?

A. I have read it over some time ago, and heard it at the time it was taken.

Q. State whether or no you may have drawn the deed referred to by Mr. Rose, and if so, how you come to prepare that deed for

75 Mr. House?

(Objected to as immaterial.)

A. After Mr. House made the sale to Rose, and also to Crager, Mr. House requested me to prepare deeds for him, as he was not familiar with conveyancing. I did so in the office of the Omaha and Northwestern Railroad Company, over the First National Bank. Mr. House occupied one room and I occupied the room adjoining.

Q. You may state if any of this purchase money by Crager or Rose was paid to you by Mr. House, and if so, how you came to receive such purchase money?

(Objected to as leading.)

A. The purchase money was paid to Mr. House, what was paid at the time the purchase was made. There were some notes given, and in one or two, or perhaps more instances in Mr. House's absence I have received money for him and paid it over to him.

Q. State whether or no that was during the time that he occupied a room over the First National Bank adjoining yours?

(Objected to as leading.)

A. Yes, it was during that time while the offices were over the First National, or after they were moved to Creighton Block. I don't at present recollect the date when we moved.

Q. Did Mr. House move over to Creighton Block at the same time?

A. Yes.

Q. State now what interest, if any, you had in making that deed or receiving the purchase money, either individually or as administrator of the estate?

A. I had no interest whatever. It was Mr. House's own transaction; I looked at it as an accommodation to fill up the deed for him.

76 Q. At the time of the purchase by you of this property from Parker, sr., and his interest in the estate, let me ask you to state whether or no such purchase was made by you with any intention or design of enabling Parker, sr., to defraud any of his creditors?

(Objected to as leading and incompetent.)

A. I never made a purchase of Mr. Parker, sr., of this property with any such intention. I was not aware that he had any creditors.

Q. You may state whether or no, at that time, or at any time, you had any knowledge that Parker, sr., by such sale to you, had any design or intention, by covering up or disposing of his property, to defraud his creditors?

(Objected to as leading.)

A. I had no such knowledge at that time, nor at any subsequent time, nor have I any such knowledge now.

Cross-examined by Mr. REDICK:

Q. If you had known that he was in debt, and had been sued, you would not have bought the property, would you?

A. No; I should not have bought the property if there was to be any trouble about it.

Q. If you had had the least knowledge that he was being sued, and was in debt to anybody, you would not have bought it?

A. No.

Q. Because you would have known that it would be to defraud his creditors, would you not?

A. I don't know that I would have known what his intentions were, whether to defraud his creditors or not.

Q. You would have had a strong suspicion, would you not?

A. I don't know whether I would have a strong suspicion; he might not be disposing of his property to defraud his creditors.

77 Q. If you had known that his property was to be attached, you would not have bought it, would you?

A. No, sir.

Q. How much money did Kennedy pay you when he bought his property at administrator's sale?

(Objected to as not proper cross-examination.)

A. He paid me the full consideration named in the deed, less what I was owing him for legal services as administrator.

Q. Was that at the first sale or second?

A. What first sale do you refer to?

Q. Did Kennedy buy more than once at the administrator's sale?

A. Yes; he bought in fifteen or seventeen lots; he purchased seventeen lots at a subsequent sale.

Q. Then at which sale did he pay you the full amount bid, less what his services—what you owed him for services in the estate?

A. I could not state the exact amount under each sale that I made as administrator to Kennedy. In my settlement with him I know that he accounted to me for every dollar named in the consideration of the deed. I will state that of the seventeen lots, I purchased but fifteen of him subsequently.

Q. You stated before in your cross-examination that you know a suit had not been commenced at the time you bought these lots of Parker, sr.; how do you know that?

A. I said that I had no knowledge of a suit having been commenced. I made my purchase of Mr. Parker several days before the execution of the deed. The delay in the execution of the deed arose from Mr. Parker's being sick.

Q. Where was he sick?

A. At my house.

Q. How long had he been sick?

78 A. He had been confined to the house two days.

Q. What day did he get here in March, 1871?

A. I don't recollect.

Q. What was he doing at your house; why did he not stay at the hotel?

A. He was sick on arriving here; after the funeral of his son, which took place at my house, he came to my house and stopped there until he went away.

Q. Did not he stop at your house before that?

A. Never in his life that I have any recollection of.

Q. Then a bargain was made after the burial of the son, was it?

A. I think so.

Q. While he was stopping at your house?

A. I am not positive about that; the bargain was made at my house, but I would not be positive whether it was after the burial of his son.

Q. You stated the deed was made at your house?

A. I drew the deed at my house.

Q. In the afternoon I believe you said?

A. My best recollection is that it was in the afternoon.

Q. Have you got that deed?

A. I am unable to find it so far; I think I have it.

Q. Have you looked for it?

A. I did at my house and over at the agricultural warehouse

where I moved from in 1874, and I had Mr. Kennedy look for it; it may yet be found among my papers.

Q. The consideration you paid to Parker, was it paid about the time the deed was made?

A. It was paid at the time the deed was delivered to me.

Q. When was it delivered to you?

A. After it was acknowledged.

79 Q. When was it acknowledged?

(Objected to on the ground that the deed is the only proper evidence.)

A. Within one or two days after it was prepared.

Q. Where was it acknowledged?

A. My recollection is that Hughes came to my house to take the acknowledgment about the time Parker was sick; it was acknowledged one or two days before he left for home.

Q. Then the money was paid to him when the acknowledgment was taken?

A. About the time of the delivery of the deed.

Q. Who was present when the money was paid?

A. I do not recollect whether anybody was present; it was paid part of it in the state bank?

Q. On what day?

A. I do not recollect the day of the week or month.

Q. How much was paid in the state bank?

A. All the money except some money I had advanced to him before on several bills while he was here—after his arrival here—which I deducted; the difference I paid him; I paid him three thousand dollars.

Q. How much money did you pay him at the state bank?

A. I should judge it was in the neighborhood of twenty-five hundred dollars.

Q. Paid in money?

A. In money.

Q. Was anybody by at the time?

A. I don't recollect; it is now seven years ago or more.

Q. Where were these notes made out for the balance?

80 A. The notes were made for the deferred payments at my house.

Q. Before you paid the twenty-five hundred or after?

A. The notes were drawn up by me at the time I got the deed.

Q. Have you got those notes?

A. No; the notes were cancelled upon receiving a deed perhaps three months later, (that is my best recollection,) from his wife, Louisa C. Parker; at least one or more of those notes was surrendered and new notes issued.

Q. Have you got the new notes?

A. I don't know.

Q. Who would be likely to have them?

A. I don't know; they might be among my papers. I attach no

more value to a paid note than I do to a paid check; I should not necessarily file them or preserve them.

Q. Did not Parker jr. board at your house a long time when he was sick?

A. He never boarded at my house when he was sick. He roomed over the state bank when he was sick. His remains were removed to my house for burial.

Q. How did it come that his remains were removed to your house?

A. He had no friends or relatives in Omaha. Parker jr. was always on very friendly terms with me, from the time when he came here, in 1857, to the time of his death; I know no other reason than as a matter of kindness to have them removed there.

Q. How did it come that House, who officed with you, and with whom you had been connected in business for years, and Kennedy, who has been your counsel in many matters, and Kountze, your banker, happened to come at that sale and buy in this property; can you explain that to the satisfaction of the court?

A. Mr. House was engineer of the Omaha and Northwestern Railroad, of which Redick was a director. By virtue of his position and my acting as vice-president, I was frequently brought in contact with him in the office of that company; nothing more; why he went there and purchased, except that he was buying property to make money, I know not. As to Kountze, he was not my banker; he was a creditor, and had been frequently told by me I had no money to pay with, and he went there to protect his interest. As to Mr. Kennedy, he was my attorney, and happened probably to be there at that time as attorney; what his motives were for purchasing I know not; he can state that himself; I am positive I had no agreement with him to purchase for me, and he did not purchase for me, nor did the other parties.

81

Q. Did not you pay Kountze a dividend on his one hundred?

A. He got his pro rata in the distribution of funds from the sale of the real estate the same as anybody else, but that did not pay his debt in full.

Q. Ain't it a fact that he got the whole amount due from Parker's estate?

A. The preferred debts being paid in full left about ten per cent. to other creditors, of which I was one myself to the extent of more than a thousand dollars.

Q. Then, as I understand you, he never got the full amount of the Parker debt?

A. No, sir, he did not.

Q. How much had property depreciated, if any, between March, 1871, and November, 1874?

(Objected to as not cross-examination and as immaterial.)

A. In 1871 there was a good deal of property sold; there was a demand for property. In 1874 there was no sale, of any account, for unimproved property, as this was.

82 Q. Do you mean to say that in 1874 property had depreciated half?

A. If that property could have been sold in 1871, March, April or May, it would have brought more than twice what it would have sold for in 1873 or 1874.

Q. Are you as sure of that as of anything else you have testified to?

A. I am pretty familiar with the value of real estate. I owned some property before in Parker's addition, and in my own addition right east of it. I am pretty familiar with prices and readiness of sale of outside property.

JNO. A. HORBACH.

Signed in my presence.

H. STULL, *Examiner.*

T. W. T. RICHARDS, a witness for plaintiff, recalled, testified as follows, viz:

Question. You stated in your examination that you made the deed conveying the property from John A. Parker, jr., to John A. Horbach. State now as near as you can the time in the evening that the deed was made?

(Counsel for defendant objects that this is not proper rebuttal testimony, it being testimony that should have been offered in chief.)

Answer. What information I have in relation to the matter inquired about was obtained while I was acting as attorney for Horbach and Parker, and I decline to make any disclosures in reference to the same.

Q. Was you employed to draw the deed by Parker or Horbach?

(Same objection as last above stated.)

A. Whatever connection I had with it was as the attorney of both of them.

Q. Will you answer the question—was you employed to draw the deed by Horbach or Parker?

83 (Same objection by defendants.)

A. I decline to answer the question further than I have done.

(Here counsel for plaintiff gives notice that he will apply to the court for an order compelling the witness to answer the question.)

Q. When was you employed by Parker in his transaction?

(Same objection by defendant.)

A. It was before the deed was made.

Q. When?

(Same objection by defendant.)

A. I don't remember when.

Q. Did he employ you personally or did Horbach employ you?

(Same objection by defendant.)

A. He and Horbach came together.

Q. Whereabouts did they first employ you?

(Same objection by defendant.)

A. At my office.

Q. At what time in the day?
(Same objection by defendant.)
A. I don't remember.
Q. Give your best recollection and impression?
(Same objection.)
A. I think it was in the evening.
Q. Of what day in the week?
A. I don't remember.
Q. Was it the same evening that you drew the deed?
(Same objection.)
A. I cannot remember about that.
Q. What is your best impression?
(Same objection.)
84 A. I don't know that I drew the deed.
Q. What is your best impression?
(Same objection.)
A. My impression is that it was the same evening that the deed was drawn.
Q. Was Parker and Horbach both present at the time of employment and drawing of the deed?
(Same objection.)
A. Yes, sir; they were both present; that is my recollection.
Q. What is your best impression as to the day of the week when it was drawn?
(Same objection.)
A. I have no impression about the day of the week.
Q. Was it after John A. Parker, jr., was buried or before; what is you best impression?
(Same objection.)
A. I have already testified about that on my previous examination; I decline to repeat what I said there.
Q. Did not John A. Horbach say to you on that occasion that he would come down on Monday morning and have his deed recorded before any attachment could be levied upon the land of Parker, or words to that effect?
(Same objection by defendant.)
A. I decline to answer the question on the ground of my professional relationship to Parker at the time.
Q. Did you not state to myself, that if you was put upon the stand as a witness that you would swear that that was the substance of the conversation, on last Friday?
(Counsel for defendant objects on the ground last above stated, and also that it is not competent for complainant to seek to
85 impeach his own witness nor to give conversations between him and the witness.)
A. I decline to testify as to any conversations in reference to the transaction.

T. W. T. RICHARDS.

Signed in my presence—
H. STULL, *Examiner.*

86 *Exhibit B.*—Parker's Addition.

Lots.	Blk.	1873.	1874.	1875.
8	4	Sold by co. treas.	Sold by co. treas.	John A. Horbach.
9		do.	do.	do.
10		do.	do.	do.
11		do.	do.	do.
12		do.	do.	do.
13		do.	do.	do.
4		do.	do.	do.
7	5	do.	do.	do.
8		do.	do.	do.
9		do.	do.	do.
10		do.	do.	do.
11		do.	do.	do.
12		do.	do.	do.
11	6	J. E. House.	do.	J. E. House.
12		do.	do.	do.
6	7	Sold by co. treas.	J. E. Bradley.	J. E. Bradley.
7		do.	Sold by co. treas.	Henry Jones.
8		do.	do.	do.
9		do.	J. W. Rose.	J. W. Rose.
1	8	do.	Sold by co. treas.	John E. Johnson.
2		do.	do.	J. A. Horbach.
3		do.	do.	do.
4		do.	do.	do.
5		do.	do.	do.
6		do.	do.	do.
9		do.	do.	J. E. House.
10		do.	Geo. H. Crager.	Geo. H. Crager.
11		do.	Sold by co. treas.	J. E. House.
12		do.	do.	do.
1	9	Herman Kountze.	Sold by co. treas.	J. A. Horbach.
7		do.	do.	do.

87 Horbach's Second Addition.

7	3	J. E. House.	J. A. Horbach.	J. E. House.
8		do.	do.	do.
9		do.	do.	do.
5	460	Grandview unpaid.	Right of way.	O. & S. W. R.R. unp'd.
1	481	do.	B. E. B. Kennedy, unpaid.	Unpaid.
9	549	There is no such lot assessed on our books.		

I hereby certify that the above is a correct copy of the tax-lists in this office as regards the lots above named.

S. G. MALLETTE,
City Treas.

Exhibit C.

In district court, third judicial district of the state of Nebraska, for Douglas county.

At the October term of said court, to wit, on the first day of December, 1877, the honorable James W. Savage, judge, being present and presiding in said court, the following proceedings were had in the case of Edward B. Hill, plaintiff, *vs.* John A. Parker, sr., et al., defendants, as appears of record on folio 673, journal "I," of said court.

Edward B. Hill, pl'ff,
vs.
John A. Parker, sr., et al. } Judgment.

On this day this cause came on to be heard before the court on the petition of said plaintiff and the evidence, and it appearing to the court that said John A. Parker, sr., has been duly served with process herein by publication, as required by law, and due proof of
88 such publication having been placed on file, and said John A. Parker, sr., still failing to answer or demur to said petition, and being duly called in open court, answered not, but made default, which, by the order of said court, is hereby entered; and it appearing to the court that there is due said plaintiff, Edward B. Hill, from said John A. Parker, sr., on the promissory note in said plaintiff's petition described, the sum of $3,244, and that the several allegations in said petition are true, as therein alleged:

It is therefore considered by the court that the said plaintiff have and recover from said defendant, John A. Parker, sr., the said sum of three thousand two hundred and forty-four dollars ($3,244), and his costs herein expended, taxed at $38.73.

And it further appearing to the court that the attachment proceedings herein against said John A. Parker, sr., are regular and in conformity to law:

It is further ordered by the court that an order of sale issue herein to the sheriff of this county, directing him to sell the real estate attached, and apply the proceeds thereof in satisfaction of this judgment.

STATE OF NEBRASKA, } *ss.*
Douglas county, }

I, Wm. H. Ijams, clerk of the district court in and for said state and county, do hereby certify that I have compared the above judgment entry of said court with the original entry as it appears of record on folio 673, journal "I," of said court, and that the same is a correct transcript thereof and the whole of said original judgment entry.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed, at the city of Omaha, this 18th day of April, 1879.

[SEAL.] WM. H. IJAMS, *Clerk.*

89 *Exhibit D.*

John A. Horbach, administrator, &c., to B. E. B. Kennedy.

Whereas John A. Horbach, as administrator of the estate of John A. Parker, jr., late of Douglas county and state of Nebraska, deceased, filed a petition in the district court of Nebraska sitting in the county of Douglas, asking that a license be granted by said court to the said John A. Horbach, as such administrator, to sell the real estate belonging to the estate of the said John A. Parker, jr., to pay the debts, &c., against said estate, and which said real estate is hereinafter described, and such proceedings were had therein that at a term of said court began and holden on the first Monday in October, A. D. 1873, the said district court did duly authorize and license the said John A. Horbach to sell said real estate, and whereas, in pursuance and by virtue of said license, said Horbach, as such administrator, did duly advertise and sell said real estate at public auction on the 17th day of November, A. D. 1873, to B. E. B. Kennedy, at and for the sum of two hundred seventy-four dollars and seventy-five cents;

And whereas, on the 16th day of December, A. D. 1873, said district court duly ratified and confirmed said sale and directed the said Horbach, as such administrator, to convey said real estate by good and sufficient deed of conveyance in fee-simple unto the said purchaser:

Now, therefore, know all men by these presents, that I, John A. Horbach, as administrator of the estate of John A. Parker, jr., deceased, in consideration of the premises and the full payment of the said sum of two hundred sixty-nine dollars and seventy-five cents by the said B. E. B. Kennedy, of Douglas county and state of Nebraska, the receipt whereof is hereby acknowledged, do
90 hereby sell, alien, convey and confirm unto the said B. E. B. Kennedy, and to his heirs and assigns forever, the certain pieces or parcels of land situate and being in Douglas county and state of Nebraska, and described as follows, to wit: Lots eight, nine and ten in block nine; also lots seven and eight (7 & 8) in block eight, all in Parker's addition to the city of Omaha; also lot one in block four hundred and eighty-one (481) in South Omaha.

To have and to hold the above granted premises, with all the privileges and appurtenances thereunto belonging, unto the said B. E. B. Kennedy and to his heirs and assigns, to his and their own proper use, benefit and behoof forever.

In witness whereof, I hereunto set my hand as such administrator this 15th day of January, A. D. 1874.

JNO. A. HORBACH,
Administrator.

In the presence of—
W. H. S. HUGHES.

STATE OF NEBRASKA, } ss.
Douglas county, }

On this 15th day of January, A. D. 1874, before me, a notary public in and for said Douglas county, personally appeared John A. Horbach, whom I know to be the identical person described in and who executed the foregoing instrument as administrator of the estate of John A. Parker, jr., and he duly acknowledged the execution thereof to be his voluntary act and deed as such administrator.

Witness my hand and notarial seal the date last above written.

[SEAL.] W. H. S. HUGHES,
Notary Public.

Recorded June 11th, 1874, at 3¼ o'clock p. m.

LEWIS S. REED,
County Clerk.

91 THE STATE OF NEBRASKA, } ss.
Douglas county, }

I, John R. Manchester, county clerk and ex-officio recorder of Douglas county, Nebraska, do hereby certify that the above and foregoing is a full and correct transcript from the records of said county, as appears in deed record No. 16, at page 301.

In testimony whereof, I hereunto set my hand and official seal this 18th day of April, A. D. 1879.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

Exhibit E.

B. E. B. Kennedy } to John A. Horbach. }

Know all men by these presents, that B. E. B. Kennedy and Frances N. Kennedy, husband and wife, of Omaha, in consideration of four hundred dollars in hand paid, do hereby grant, bargain, sell, convey, and confirm unto John A. Horbach, of same place, the following described real estate, situate in the county of Douglas and state of Nebraska, to wit, lots eight (8,) nine (9,) and ten (10,) in block nine in Parker's addition to Omaha; also lot number one in block four hundred and eighty-one (481,) in South Omaha.

Together with all the tenements, hereditaments, and appurtenances to the same belonging, and all the estate, right, title, interest, dower, claim, or demand whatsoever of the said B. E. B. Kennedy and Frances N. Kennedy of, in, or to the same, or any part thereof.

To have and to hold the above described premises, with the appurtenances, unto the said J. A. Horbach, and to his heirs and assigns forever; and we do hereby covenant with the said J. A. Horbach, and his heirs and assigns, that we are lawfully seized of said prem-

ises; that they are free from incumbrance; that we have good
92 right and lawful authority to sell the same, and we do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

Signed this 23rd day of March, A. D. eighteen hundred and seventy-five.

B. E. B. KENNEDY.
FRANCES N. KENNEDY.

In presence of—
WILLIAM J. KENNEDY.

THE STATE OF NEBRASKA, *Douglas county*, } *ss.*

On this twenty-third day of March, A. D. eighteen hundred and seventy-five, before me, a notary public in and for said county, personally came the above-named B. E. B. Kennedy and Frances N. Kennedy, who are personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed for the purpose therein stated.

Witness my hand and notarial seal the date aforesaid.

[SEAL.] WILLIAM. J. KENNEDY,
Notary Public, Douglas co., Neb.

Entered in numerical index of deeds March 24th, 1875.
LEWIS S. REED,
County Clerk.

Recorded March 24th, 1875, at 9 o'clock a. m.
LEWIS S. REED,
County Clerk.

THE STATE OF NEBRASKA, *Douglas county*, } *ss.*

I, John R. Manchester, county clerk and ex-officio recorder of Douglas county, Nebraska, do hereby certify that the above
93 and foregoing is a full and correct transcript from the records of said county as appears in deed book No. 17 at page 578.

In testimony whereof I hereunto set my hand and official seal this 18th day of April, A. D. 1879.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

Exhibit F.

John A. Horbach, administrator, &c., }
to
J. E. House. }

Whereas John A. Horbach, as administrator of the estate of John A. Parker, jr., late of Douglas county and state of Nebraska, deceased,

filed a petition in the district court of Nebraska sitting in Douglas county asking that a license be granted by said court to the said John A. Horbach, as such administrator, to sell the real estate belonging to the estate of the said John A. Parker, jr., to pay the debts, &c., against said estate, and which said real estate is hereinafter described, and such proceedings were had therein that at a term of said court begun and holden on the first Monday in October, A. D. 1873, the said district court did duly authorize and license the said John A. Horbach to sell the said real estate; and whereas, in pursuance and by virtue of said license, said Horbach as such administrator did duly advertise and sell said real estate at public auction on the 17th day of November, A. D. 1873, to J. E. House at and for the sum of twenty-two hundred fifty-four dollars and fifty cents, ($2,254 50;) and whereas on the 16th day of December, A. D. 1873, said district court duly ratified and confirmed said sale and directed the said John A. Horbach as such administrator to convey said real estate by good and sufficient deed of conveyance in fee-simple unto the said
94 purchaser:

Now, therefore, know all men by these presents, that I, John A. Horbach, as administrator of the estate of John A. Parker, jr., deceased, in consideration of the premises and the full payment of the said sum of twenty-two hundred and fifty-four dollars and fifty cents, received in full to my satisfaction of J. E. House, the receipt of which is hereby acknowledged, do hereby sell, alien, convey, and confirm unto the said J. E. House, and to his heirs and assigns forever, the certain pieces or parcels of land situate and being in Douglas county and state of Nebraska, and described as follows, to wit: lots eleven and twelve (11 and 12,) in block six (6;) also lots seven, eight, and nine (7, 8, and 9,) in block seven (7;) also lots one, two, three, four, five, six, nine, ten, eleven, and twelve (1, 2, 3, 4, 5, 6, 9, 10, 11, and 12,) in block eight (8;) also lots two, three, four, five, six, eleven, twelve, thirteen, and fourteen, (2, 3, 4, 5, 6, 11, 12, 13, and 14,) in block nine (9,) all in Parker's addition to the city of Omaha; also lots seven, eight, and nine, (7, 8, and 9,) in block three (3,) in Horbach's second addition to the city of Omaha.

To have and to hold the above granted premises, with all the privileges and appurtenances thereunto belonging, unto the said J. E. House, his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

In witness whereof, I have hereunto set my hand as such administrator this 15th day of January, A. D. 1874.

JOHN A. HORBACH,
Administrator.

Executed and delivered in presence of—
W. H. S. HUGHES.

95 STATE OF NEBRASKA, } ss.
Douglas county, }

On this 15th day of January, A. D. 1874, before me, a notary public in and for said Douglas county, personally appeared John A. Horbach, whom I know to be the identical person described in and who executed the foregoing instrument as administrator of the estate of John A. Parker, jr., and duly acknowledged the same to be his voluntary act and deed as such administrator.

In witness whereof I have hereto set my hand and notarial seal the date last above written.

[SEAL.] W. H. S. HUGHES,
Notary Public.

Recorded January 28th, 1874, at 1¾ o'clock p. m.
LEWIS S. REED, *County Clerk.*

THE STATE OF NEBRASKA, } ss.
Douglas county, }

I, John R. Manchester, county clerk and ex-officio recorder of Douglas county, Nebraska, do hereby certify that the above and foregoing is a full and correct transcript from the records of said county as appears in deed record No. 15, at page 397.

In testimony whereof I hereunto set my hand and official seal this 18th day of April, A. D. 1879.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

96 *Exhibit G.*

J. E. House to J. A. Horbach:

Know all men by these presents, that I, J. E. House, of Omaha, in consideration of twenty-seven hundred dollars in hand paid, do hereby grant, bargain, sell, convey, and confirm unto J. A. Horbach, of Omaha, Nebraska, the following described real estate, situate in the county of Douglas and state of Nebraska, to wit: Lots eleven (11) and twelve (12) in block number six (6), and lots seven (7) and eight (8) in block number seven (7), and lots one (1), two (2), three (3), four (4), five (5), six (6), nine (9), eleven (11), and twelve (12), in block number eight (8); also lots number two (2), three (3), four (4), five (5), six (6), eleven (11), twelve (12), thirteen (13), and fourteen (14), in block nine (9), all in Parker's addition to Omaha, Nebraska; also lots number seven (7), eight (8), and nine (9), in block number three (3), in Horbach's second addition to Omaha, Neb. Said Horbach assumes to pay taxes due for 1874. Together with all the tenements, hereditaments, and appurtenances to the same belonging, and all the estate, right, title, interest, dower, claim, or demand whatsoever of the said J. E. House of, in, or to the same, or any part thereof. To have and to hold the above-described premises,

with the appurtenances, unto the said J. A. Horbach, and to his heirs and assigns forever; and I do hereby covenant with the said J. A. Horbach, of Omaha, and his heirs and assigns, that I am lawfully seized of said premises, that they are free from incumbrance, that I have good right and lawful authority to sell the same, and I do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

Signed this twenty-first day of January, A. D. eighteen
97 hundred and seventy-five.

J. E. HOUSE.

In presence of—
W. H. S. HUGHES.

THE STATE OF NEBRASKA, } ss.
Douglas county, }

On this 22nd day of Jan'y, A. D. eighteen hundred and seventy-five, before me, a notary public in and for said county, personally came the above-named J. E. House, who is personally known to me to be the identical person whose name is affixed to the above deed as grantor, and he acknowledged the instrument to be voluntary act and deed for the purposes therein stated.

Witness my hand and notorial seal the date aforesaid.

[SEAL.] W. H. S. HUGHES,
Notarial Public.

Entered in numerical index of deeds March 6th, 1875.

LEWIS S. REED,
County Clerk.

Recorded March 6th, 1875, at 9¼ o'clock a. m.

LEWIS S. REED,
County Clerk.

THE STATE OF NEBRASKA, } ss.
Douglas county, }

I, John R. Manchester, county clerk and ex-officio recorder of Douglas county, Nebraska, do hereby certify that the above and foregoing is a full and correct transcript from the records of said county, as appears in deed book No. 17, at page 511.

In testimony whereof I hereunto set my hand and official seal this 18th day of April, A. D. 1879.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

98 *Exhibit H.*

Whereas John A. Horbach, as administrator of the estate of John A. Parker, jr., late of Douglas county and state of Nebraska, deceased, filed a petition in the district court of Nebraska, sitting in

Douglas county, asking that a license be granted by said court to the said John A. Horbach, as such administrator, to sell the real estate belonging to the estate of the said John A. Parker, jr., to pay the debts, &c., against said estate, and which said real estate is hereinafter described, and such proceedings were had therein that at a term of said court begun and holden on the first Monday in October, A. D. 1873, the said district court did duly authorize and license the said John A. Horbach to sell the said real estate; and whereas, in pursuance and by virtue of said license, said Horbach, as such administrator, did duly advertise and sell said real estate at public auction, on the 17th day of November, 1873, to Herman Kountze, at and for the sum of two hundred and twelve dollars ($212.00); and whereas, on the 16th day of December, A. D. 1873, said district court duly ratified and confirmed said sale, and directed the said John A. Horbach, as such administrator, to convey said real estate, by good and sufficient deed of conveyance and in fee-simple, unto said purchaser:

Now, therefore, know all men by these presents, that I, John A. Horbach, as administrator of the estate of John A. Parker, jr., deceased, in consideration of the premises and the full payment of the said sum of two hundred and twelve dollars, received in full to my satisfaction, of Herman Kountze, the receipt of which is
99 hereby acknowledged, do hereby sell, alien, convey and confirm unto the said Herman Kountze, and to his heirs and assigns forever, the certain pieces or parcels of land situated and being in Douglas county and state of Nebraska, and described as follows, to wit: Lots one and seven (1 & 7), in block nine (9), in Parker's addition to the city of Omaha; lot 5, in block 460; lot 10, in block 486; lot 9, in block 449; lot 10, in block 432; lot 11, in block 464; lot 2, in block 429, and lot 1, in block 497; all in said last named lots are in South Omaha.

To have and to hold the above granted premises with all the appurtenances thereunto belonging, unto the said Herman Kountze, his heirs and assigns, to his and their own proper use, benefit and behoof, forever.

In witness whereof I have hereunto set my hand as such administrator this 15th day of January, A. D. 1874.

JNO. A. HORBACH,
Administrator.

Executed and delivered in presence of—
W. H. S. HUGHES.

STATE OF NEBRASKA, }
Douglas county, } *ss.*

On the 15th day of January, A. D. 1874, before me, a notary public in and for said Douglas county, personally appeared John A. Horbach, whom I know to be the identical person described in and who executed the foregoing instrument as administrator of the estate

of John A. Parker, jr., and he duly acknowledged the same to be his voluntary act and deed as such administrator.

Witness my hand and notarial seal the date last above written.

W. H. S. HUGHES,
[SEAL.] *Notary Public.*

Recorded January 28, 1874, at 1 o'clock p. m.

100 LEWIS S. REED,
County Clerk.

THE STATE OF NEBRASKA, } ss.
Douglas county, }

I, John R. Manchester, county clerk and ex-officio recorder of Douglas county, Nebraska, do hereby certify that the above and foregoing is a full and correct transcript from the records of said county, as appears in deed record No. 15, page 395.

In testimony whereof I hereunto set my hand and official seal this 18th day of April, A. D. 1879.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

Exhibit I.

Herman Kountze & wife } to Jno. A. Horbach. }

Know all men by these presents that Herman Kountze and Elizabeth Kountze, husband and wife, in consideration of four hundred dollars in hand paid, do hereby grant, bargain, sell, convey and confirm unto J. A. Horbach, of Omaha, the following-described real estate, situate in county of Douglas and state of Nebraska, to wit: Lots number one (1) and seven (7), in block number nine (9), in Parker's addition to Omaha, Neb.; lots ten (10), in bl'k four hundred and eighty-six; lot No. nine (9), in four hundred and forty-nine (449); lot ten, in four hundred and thirty-two (432); lot eleven, in bl'k four hundred and sixty-four (464); lot two, in bl'k four hundred and twenty-nine (429); lot one (1), in bl'k four hundred and ninety-seven (497), and lot number five, in bl'k four hundred and sixty (460), in South Omaha, formerly known as Grandview, together with all the tenements, hereditaments, and appurtenances to the same belonging, and all the estate, right, title, interest, dower, claim, or demand whatsoever of the said Herman Kountze
101 and Elizabeth Kountze of, in, or to the same or any part thereof; to have and to hold the above-described premises with the appurtenances unto the said J. A. Horbach and to his heirs and assigns forever; and we do hereby covenant with the said Jno. A. Horbach and his heirs and assigns that we lawfully seized of said premises; that they are free from incumbrance; that we have good right and lawful authority to sell the same, and we do hereby cove-

nant to warrant and defend the said premises against the lawful claims of all persons whomsoever claiming through us.

Signed this 18th day of December, A. D. eighteen hundred and seventy-four.

HERMAN KOUNTZE.
ELIZABETH KOUNTZE.

In presence of—
W. H. S. HUGHES.

THE STATE OF NEBRASKA, } ss.
Douglas county, }

On this 18th day of December, A. D. eighteen hundred and seventy-four, before me, a notary public in and for said county, personally came the above-named Herman Kountze and Elizabeth Kountze, who are personally known to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed for the purposes therein stated.

Witness my hand and seal the date aforesaid.

[SEAL.] W. H. S. HUGHES,
Notary Public.

Entered in numerical index of deeds December 18th, 1874.

LEWIS S. REED,
County Clerk.

Recorded December 18th, 1874, at 6 o'clock p. m.

LEWIS S. REED,
County Clerk.

102 THE STATE OF NEBRASKA, } ss.
Douglas county, }

I, John R. Manchester, county clerk and ex-officio recorder of Douglas county, Nebraska, do hereby certify that the above and foregoing is a full and correct transcript from the records of said county, as appears in deed book No. 17, at page 246.

In testimony whereof I hereunto set my hand and official seal this 18th day of April, A. D. 1879.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

103 *Exhibit P.*

John A. Horbach, administrator, &c., }
to }
B. E. B. Kennedy. }

Whereas John A. Horbach, as administrator of the estate of John A. Parker, junior, late of Douglas county and state of Nebraska,

deceased, filed a petition in the district court of Nebraska in and for Douglas county, asking that a license be granted by said court to the said John A. Horbach as such administrator to sell the real estate belonging to the estate of the said John A. Parker, jr., to pay the debts, &c., against said estate, and which said real estate is hereinafter described, and such proceedings were had therein at a term of said court begun and holden on the first Monday in October, A. D. 1873, the said district court did duly authorize and license the said John A. Horbach to sell said real estate.

And whereas in pursuance and by virtue of said license said Horbach, as such administrator, did duly advertise and sell said real estate at public auction, on the 23rd day of February, A. D. 1874, to B. E. B. Kennedy, at and for the sum of seventeen dollars in hand paid. And whereas on the 3rd day of March, A. D. 1874, said district court did duly ratify and confirm said sale and directed said Horbach as such administrator to convey said real estate to said purchaser by a good and sufficient deed of conveyance in fee-simple:

Now, therefore, know all men by these presents, that I, John A. Horbach, as administrator of the estate of John A. Parker, jr., deceased, in consideration of the premises and the full payment of the said sum of seventeen dollars by the said B. E. B Kennedy, the receipt of which is hereby acknowledged, do hereby sell, alien, con-
104 vey and confirm unto the said B. E. B. Kennedy and his heirs and assigns forever, the certain pieces or parcels of land situate and being in Douglas county and state of Nebraska, and described as follows, to wit:

Lots eight, nine, ten, eleven, twelve, thirteen and fourteen in block four, and also lots seven, eight, nine, ten, eleven and twelve in block five, and also lots three, four, five and six in block seven, all in Parker's addition to the city of Omaha, as surveyed and platted.

To have and to hold the above granted premises, with all the privileges and appurtenances thereunto belonging, unto the said B. E. B. Kennedy and to his heirs and assigns forever.

In witness whereof I hereunto set my hand as such administrator this 9th day of June, A. D. 1874.

JOHN A. HORBACH,
Administrator.

Executed and delivered in presence of—
W. H. S. HUGHES.

STATE OF NEBRASKA, } ss.
Douglas county, }

On this 9th day of June, A. D. 1874, before me, a notary public in and for said Douglas county, personally appeared John A. Horbach, whom I know to be the identical person described in and who executed the foregoing instrument as grantor and administrator of the estate of John A. Parker, jr., deceased, and duly acknowledged the same to be his voluntary act and deed as such administrator.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] W. H. S. HUGHES,
Notary Public.

Recorded June 11th, 1874, at 3¼ o'clock p. m.
105 LEWIS S. REED,
County Clerk.

THE STATE OF NEBRASKA, } ss.
Douglas county, }

I, John R. Manchester, county clerk, do hereby certify that the above and foregoing is a full and correct transcript from the records of said county as appears in deed book No. 16, at page 302.

In testimony whereof I hereunto set my hand and official seal this 7th day of November, A. D. 1879.

JOHN R. MANCHESTER,
[SEAL.] *County Clerk.*

Exhibit Q.

Parker, sr., to Parker, jr.

This indenture, made this 17th day of September, in the year one thousand eight hundred and seventy, between John A. Parker, sr., and Louisa C. Parker, his wife, of the county of Dinwidde, Virginia, of the first part, and John A. Parker, jr., of Omaha city, Nebraska, of the second part, witnesseth that the said John A. Parker, sr., and Louisa Parker, by their attorney in fact, John A. Horbach, acting in virtue of a certain letter of attorney under the hand of the said John A. Parker, sr., and Louisa C. Parker, his wife, and by them duly executed on the 30th day of Nov., A. D. 1869, for and in consideration of the sum of thirty-four hundred dollars in hand paid, by these presents and by force and virtue of the said power and authority given by said letter of attorney, hath granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said John A. Parker, jr., and to his heirs and assigns forever, the following described real estate situte in the county of Douglas, city of Omaha and state of Nebraska, to wit:

106 Lots (8) eight, (9) nine, (10) ten, (11) eleven, (12) twelve, (13) thirteen and fourteen (14), in block (4) four; lots (7) seven, (8) eight, (9) nine, (10) ten, (11) eleven and twelve (12), in block (5) five; lots (3) three, (4) four, (5) five and six (6), in block (7) seven, being and lying in Parker's addition to the city of Omaha, as marked and numbered on the plat of said addition on file in the clerk's office of the county of Douglas, state of Nebraska.

Together with all the tenements, hereditaments, and appurtenances to the same belonging, and all the estate, right, title, interest, dower,

claim or demand whatsoever of the said John A. Parker, sr., and Louisa C. Parker, his wife, of, in, or to the same or any part thereof.

To have and to hold the above described premises, with the appurtenances, unto the said John A. Parker, jr., and to his heirs and assigns forever.

And the said John A. Parker, sr., and Louisa C. Parker, by their attorney in fact aforesaid, in virtue of the authority aforesaid, doth hereby covenant and agree to and with the said John A. Parker, jr., that they are lawfully seized of said premises, that they have good right and lawful authority to sell the same, and that said premises are free from all incumbrance whatsoever, and that they will warrant and defend the title thereto against the lawful claims and demands of all persons whomsoever.

In testimony whereof the said John A. Horbach, as attorney in fact aforesaid, hath hereunto set the hand of the said John A. Parker, sr., and Louisa C. Parker, together with his own hand as their attorney in fact, the day and year first above written.

JNO. A. PARKER,
LOUISA C. PARKER,
By JNO. A. HORBACH,
Their attorney in fact.

In presence of—
W. H. S. HUGHES.

107 In. rev. $3.50.

THE STATE OF NEBRASKA, }
Douglas county, } *ss.*

On this seventeenth day of September, 1870, before me, a notary public within and for said county, personally appeared the above named John A. Horbach, who is personally known to me to be the identical person described in and who executed the foregoing deed, and in his own name and in the name of his constituents and principals, John A. Parker, sr., and Louisa C. Parker, in due form of law acknowledged the foregoing instrument to be his own voluntary act and deed of his constituents and principals, the said John A. Parker, sr., and Louisa C. Parker, by him the said John A. Horbach done and executed in virtue of a certain letter of attorney to him for that purpose granted.

Witness my hand and notarial seal the date aforesaid.

W. H. S. HUGHES,
[SEAL.] *Notary Public.*

Recorded Nov. 19, A. D. 1870, at 10 o'clock a. m.

THOS. SWOBE,
County Clerk.

THE STATE OF NEBRASKA, } ss.
Douglas county, }

I, John R. Manchester, county clerk and ex-officio recorder of said county, do hereby certify that the foregoing is a full and correct transcript from the records of said county as appears in deed book No. 10, at page 186.

In testimony whereof I hereunto set my hand and official seal this 10th day of November, A. D. 1879.

JOHN R. MANCHESTER.
[SEAL.] *County Clerk.*

108 *Exhibit R.*

B. E. B. Kennedy & wife }
to
Jno. A. Horbach. }

Know all men by these presents, that B. E. B. Kennedy and Frances N. Kennedy, husband and wife, of Omaha, in consideration of one hundred and sixty-seven dollars in hand paid, do hereby grant, bargain, sell, convey, and confirm unto Jno. A. Horbach, of Omaha, Neb., the following-described real estate, situate in the county of Douglas and state of Nebrasba, to wit: Lots numbers eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), and fourteen (14) in block No. four (4); also lots number seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12) in block number five (5); also lots numbers three (3) and four (4) in block number seven (7), all in Parker's addition to Omaha, Nebraska, subject to a certain claim under bond dated September 7th, 1870, made by J. A. Parker, jr., and due to J. A. Horbach.

Together with all the tenements, hereditaments, and appurtenances to the same belonging, and all the estate, right, title, interest, dower, claim, or demand whatsoever of the said B. E. B. Kennedy and Frances N. Kennedy of, in, or to the same or any part thereof.

To have and to hold the above-described premises with the appurtenances unto the said Jno. A. Horbach and to his heirs and assigns forever; and we do hereby covenant with the said Jno. A. Horbach and his heirs and assigns that we are lawfully seized of said premises; that they are free from incumbrance, except as to his claim of 3,400 dollars and interest as above stated; that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the said premises against the lawful claims of all persons claiming under us.

109 Signed this twenty-first day of December, A. D. eighteen hundred and seventy-four.

B. E. B. KENNEDY.
FRANCES N. KENNEDY.

In presence of—
BYRON REED.

THE STATE OF NEBRASKA, } ss.
Douglas county, }

On this 28th day of December, A. D. eighteen hundred and seventy-four, before me, a notary public in and for said county, personally came the above-named B. E. B. Kennedy and Frances N. Kennedy, who are personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed for the purposes therein stated.

Witness my hand and notarial seal the date aforesaid.

[SEAL.] BYRON REED,
Notary Public.

Entered in numerical index of deeds December 29th, 1874.

LEWIS S. REED,
County Clerk.

Recorded December 29th, 1874, at 9½ o'clock a. m.

LEWIS S. REED,
County Clerk.

THE STATE OF NEBRASKA, } ss.
Douglas county, }

I, John R. Manchester, county clerk, do hereby certify that the above and foregoing is a full and correct transcript from the records of said county, as appears in deed book No. 17, at page 292.

In testimony whereof I hereunto set my hand and official seal this 7th day of November, A. D. 1879.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

110 *Exhibit S.*

In the circuit court of the United States, district of Nebraska.

Basil Manley, jr., }
vs.
John A. Parker, sr. }

UNITED STATES OF AMERICA, } ss.
District of Nebraska, }

I, Watson B. Smith, clerk of the circuit court of the United States for the district of Nebraska, certify that the above entitled cause was commenced in said circuit court on the 18th day of March, 1871; amount claimed by said Basil Manley is the sum of $10,000.00 and interest from the 22nd day of January, 1864.

In testimony whereof I have caused the seal of said court to be affixed at the city of Omaha in said district this 11th day of November, 1879.

[SEAL.] WATSON B. SMITH, *Clerk.*

Exhibit T.

In the district court for Douglas county, state of Nebraska.

Basil Manley, pl'ff,
vs.
John A. Parker, sr., def't.

STATE OF NEBRASKA, *County of Douglas,* } *ss.*

I, William H. Ijams, clerk of said court, hereby certify that said suit was commenced in said court Nov'r 15, 1871, and that judgment was rendered on the 29th day of July, 1872, for the plaintiff against the defendant in the amount claimed, being eighteen thousand four hundred and sixteen dollars and sixty-five cents; said judgment was taken by default.

Witness my hand and seal this 14th day of November, 1879.

[SEAL.] WM. H. IJAMS, *Clerk.*

111 JOHN A. HORBACH, the respondent, of lawful age, being first sworn by me as hereinafter certified, and examined in chief by Mr. Kennedy, testified as follows:

Q. You are the respondent in this case, are you?

A. I suppose I am.

Q. You may state if you are acquainted or ever were with the complainant, Edward B. Hill.

A. I am not, and never was.

Q. When did you first hear that there was such a man?

A. About the 3rd or 4th day of August, 1878. It was the time a newspaper article came out in the Omaha Herald.

Q. State what it related to.

A. It related to a suit being commenced by Redick for a man named E. B. Hill against John A. Parker, sr., and I believe myself.

Q. Are you acquainted with John A. Parker, sr.?

A. I am.

Q. How long have you known him?

A. Since some time in the fall of 1856.

Q. In the testimony taken by the complainant reference has been made to a conveyance by John A. Parker, sr., to you; state, if you recollect, when that was.

A. In March, 1871.

Q. What did it relate to?

A. It related to the purchase by me from John A. Parker, sr., of his property in Nebraska—lots in Parker's addition & in South Omaha, and some other property.

Q. Describe, if you can, the property in Omaha that you purchased at that time.

A. It consisted of a number of lots in blocks 4, 5, 6, 7, 8, and 9

in Parker's addition to Omaha; some lots in South Omaha in what was originally platted as the town of Grandview and some
112 Decatur lots; the property is described in the deed.

Q. Were you acquainted at that time with the value of property in Parker's addition to Omaha?

A. Yes; in a general way.

Q. What was the value of these lots to which you have referred at that time in 1871?

A. Well, the lots ranged anywhere from $150 to $250; there was no particular market value, but that was about the way they were held.

Q. What was the value of the same property in 1873 and 1874?

A. In 1873 there was no demand for property, at least along after the panic which took place in Sept. There was no sale for unimproved property; along in 1874 the lots were held at from $75 to $200, the highest.

Q. State, then, in your judgment, what was the value of the lots referred to and the other property that belonged to John A. Parker's estate in 1873 and 1874.

A. Probably between three and four thousand dollars.

Q. Did that include the seventeen lots referred to?

A. Yes.

Q. What was the consideration of the purchase referred to by you from John A. Parker, sr., in 1871?

A. It was placed at about $6,000—that is, in my dealing with him.

Q. What proportion of that did you pay and have you since paid?

A. I paid at the time something like $3,000. The balance was paid by notes which have since been settled.

Q. State what notes you refer to, who made by, and to whom payable.

A. The notes were made by myself—made payable partly to John A. Parker and partly to Louisa C. Parker, his wife.

113 Q. Have you the deed that you received from Parker with you?

A. No, sir; I don't know whether I have got it.

(Respondent here gives notice that he will produce and read on the hearing of this case the original deeds or certified copies of the record from John A. Parker, sr., and wife to John A. Horbach of a portion of the property in question, and of the interest of John A. Parker, sr., in the estate of John A. Parker, jr., deceased, dated March 20th, 1871, together with the certificate and acknowledgment of the recording.)

Q. You stated in your testimony that the first you heard of Edward B. Hill was at the time of the commencement of this suit of Hill *vs.* Parker and the attachment of the property in question; state when you first heard of any indebtedness or claim claimed by Hill against John A. Parker, sr., referring to the claim in the attachment suit.

A. I never heard of any claim of Hill against Parker, sr., or

Parker, jr., until the commencement of this suit; I never heard of the man before.

Q. What knowledge did you have at that time, if any, respecting any indebtedness of John A. Parker, sr., in 1871, at the time you purchased?

A. I have no knowledge of any indebtedness of Parker, sr.

Q. State if you are acquainted with the handwriting of John A. Parker, sr.

A. I am.

Q. Look at this document and state in whose handwriting it is (handing witness a paper.)

A. That is John A. Parker, senior's, handwriting.

114 Q. Whose signature is to it?

A. John A. Parker, junior's.

Q. Are you acquainted with the handwriting of John A. Parker, junior?

A. Yes, sir.

Q. Whose handwriting is that on the back of it?

A. John A. Parker, senior's.

Q. Whose signature is to it?

A. John A. Parker, senior's.

Q. From whom did you get this paper?

A. From John A. Parker, sr., at the time I purchased this property of him.

(Respondent offers in evidence the paper just identified, together with the assignment on the back of it, the papers being dated Oakland, Dinwiddie county, Va., Sept. 7th, 1870. It is attached, marked Exhibit "I.")

(Here counsel for complainant objects to witness leaving the stand to talk with his counsel.)

Cross-examined by JOHN I. REDICK:

Q. At the time Parker made you this deed, the 20th of March, 1871, you meant to buy everything he had in this state, did you not?

A. I meant to purchase all the real estate and some claims which he had which the deed recites.

Q. Is it not a fact that the deed was executed at night?

A. No, sir; it is not.

Q. Is it not a fact that Billy Hughes took the acknowledgment at night?

A. I think not.

Q. Will you swear it was not?

A. I will swear that to the best of my recollection Billy Hughes took the acknowledgment in the afternoon of the 20th day of March.

115 Q. Is it not a fact that you went to T. W. T. Richards' office to have him draw that assignment—just offered in evidence by you—to draw the papers to convey this property?

A. No, sir, I never went to T. W. T. Richards' office to have the assignment offered in evidence drawn.

Q. Did you not go with John A. Parker, sr., to Richards' office about the time Parker was sued by one Basil Manley?

A. No, sir.

Q. Did you not go into Richards' office with Parker when he had the summons in his hand?

A. No, sir, I never went in with him at that time; I didn't know that he was sued.

Q. Who drew that deed from Parker to you?

A. I drew the deed.

Q. Where was you when you drew it?

A. The deed was drawn at my house.

Q. How many notes were given at that time?

A. My recollection is, at the time there was three; subsequently they were taken up and one was cancelled and two given; I think in the first instance they all run to Parker, sr., but afterwards there was a deed procured of Louisa C. Parker, and a request sent here to make one of the notes payable to her, which was done; I think the notes in the first instance was in the aggregate about $3,000—the whole three.

Q. When were they due?

A. The original notes was six, twelve, and eighteen months, is my best recollection.

Q. Did you pay the first note in money?

A. I think the note was paid before it was due, in advances to Parker's family.

Q. To John A. Parker, junior's, family?

116 A. No, sir; he had no family—advances to John A. Parker, senior's, family.

Q. Where were they?

A. They were at Dinwiddie or Tappahannock, Virginia.

Q. Was not the old man Parker able to support his own family?

A. Well, there was money advanced to his daughter and some sent to him, and I think also to his wife direct.

Q. After that note was given?

A. Yes, sir.

Q. When was the next note paid; was it paid in money?

A. I could not tell you the regular order; the second note or the first and second notes together were paid in drafts or money, deducting what I had advanced; it was paid in 1871 and a portion of it in 1872.

Q. Where was it paid?

A. Paid here, by remittances.

Q. You would send drafts?

A. Most likely.

Q. Can you tell whether it was by money or drafts by any memorandum you have?

A. I don't know whether I could or not.

Q. Will you state whether you paid in money or draft?

A. It will take a good while to rummage around among my papers; it is three or four years ago now, or more.

Q. How was the third note paid?

A. One note was paid by advances before it was due; he stated to me that the claims against the estate would not come to over $2,200, and afterwards there was a suit commenced by W. Ray and Vaughn for about $1,800.

Q. Never mind about that; how was the third note paid?

A. There was one note cancelled in consequence of a misstatement of what was due against the estate.

117 Q. Have you got those notes?

A. I don't know whether I have got them among my papers or not; notes that I have paid I attach no value to, more than to a check; I may have them among some old papers of mine.

Q. Do you pretend to say that Parker was so poor he could not support his family?

A. He had a great deal of property, but was generally pretty short of money; I know he always wanted his money, if you owed him anything, before it was due.

Q. Have you not been intimately acquainted with the old man Parker for the last fifteen or sixteen years?

A. I could not say that I was; he was register of the land office here when I was clerking with old man Gilmore, the receiver, in 1858 and 1859.

Q. Did he not have something to do as your attorney in land pre-emption matters, Parker and Niles?

A. No, sir; I transacted some business for him, I had a power of attorney to transact business for him; After he went to Honolulu as consul, in 1859, he had nothing more to do with my pre-emption matters.

Q. Did you not pay them a large fee for working through your pre emption matters?

A. No, sir; I never paid him anything.

Q. Did you not pay Parker and Niles some $1,600?

A. No, sir; I paid $100 to Niles subsequently, in 1863; he had no connection with Parker; in 1858 and 1859 I did not know Niles.

JNO. A. HORBACH.

Respondent offers in evidence certified copies of the records of the district court in and for Douglas county, Nebraska, in the
118 case of "The matter of the estate of John A. Parker, jr., deceased," and also certified copies of the probate record of the settlement of the estate of John A. Parker, jr., deceased, and also gives notice that he will produce upon the hearing the original deeds, (or certified copies of the same,) from John A. Horbach, as administrator, to Herman Kountze, J. E. House, and B. E. B. Kennedy, all of which is objected to by complainant as immaterial. The

certified copies of the district and probate court records are hereto attached, marked respectively Exhibits "2" and "3."

118½ "*Exhibit 1.*—J. T. B., examiner.

OAKLAND, DINWIDDIE C'Y, VA.,
September 7th, 1870.

I have this day purchased of my father, John A. Parker, sr., (17) seventeen lots in Parker's addition to Omaha, Nebraska, and he has given me an order on John A. Horbach, (who holds a full power of att'y from him and Louisa C. Parker,) to convey said lots to me. And on a final accounting of all business and accounts between my father and myself this day, including the purchase of the said seventeen lots, I find myself indebted to him in the sum of eight thousand seven hundred and thirty-four dollars ($8,734), which sum I am to pay to him or order, and to certain creditors of his as he shall hereafter name, one year from this date. And in case I am released from two certain bonds of three thousand dollars and upwards, I agree to reconvey to him, my father, the said seventeen lots this day purchased of him, for a like consideration, together with all expenses incurred on same, which sum shall be a credit to my indebtedness to him, my father, the said John A. Parker, sr., and for the faithful performance of which I do by these presents bind myself and heirs and assigns in the penal sum seventeen thousand four hundred and sixty-eight dollars.

As witness my hand and seal the day and year first written.

(Signed) JOHN A. PARKER, JR. [SEAL.]"

(Written endorsements on the back as follows:)

"$8,734
3,400

$5,334 balance exclusive of 17 lots."

118¾ OMAHA, 20*th March*, 1871.

Having this day sold to John A. Horbach, esq., my interest of seventeen lots in Parker's addition to Omaha, also all my interest in the estate of my son, John A. Parker, jr., comprising all lots, lands, and claims in the counties of Douglas and Burt, in the state of Nebraska, I hereby sell and assign to said John A. Horbach the within claim against said estate, and authorize him to collect the same, he agreeing to pay the debts in Omaha, Neb., due to himself and others, amounting to the sum not exceeding $2,200.

(Signed) JOHN A. PARKER."

Exhibit 2.—J. T. B., examiner.

119 To L. B. Gibson, judge of probate for the county of Douglas, in the state of Nebraska:

The petition of John A. Parker, sr., who is of the age of twenty-one years and upwards, respectfully shows:

That John A. Parker, jr., late of the city of Omaha, in said county of Douglas, departed this life in said county of Douglas, the 14th day of March, in the year of our Lord one thousand eight hundred and seventy-one, leaving no last will and testament, as your petitioner is informed and verily believes. That said deceased was, at and immediately previous to his death, an inhabitant of said county of Douglas, and that he was possessed of personal and real estate situate and being in the county of Douglas to be administered, and that the estimated value thereof is the sum of dollars, or thereabouts, as your petitioner is informed and verily believes.

And your petitioner further shows that the names and residence of the heirs at law of said deceased and other persons interested in said estate are as follows:

Your petitioner, who resides in the county of Dinwiddie and state of Virginia, and who is the father of said John A. Parker, deceased; that said John A. Parker, deceased, was at the time of his death unmarried, and left no children surviving him; that John A. Horbach, of Douglas county, Nebraska, a creditor of said deceased, is a suitable person to be appointed administrator of said estate.

Your petitioner therefore prays that all persons interested in said estate may be duly cited as required by law, and as to this court may seem proper; and administration of said estate may not be granted to John A. Horbach; and that such other and further order and proceedings may be had in the premises as may be required by the statutes in such case made and provided.

Dated March 20th, 1871.

J. A. PARKER.

119½ STATE OF NEBRASKA, } ss.
County of Douglas, }

On this 21st day of March, in the year eighteen hundred and seventy-one, then personally appeared before me, John A. Parker, the petitioner named in the foregoing petition, who, being by me duly sworn, did depose and say that has read the foregoing petition by him subscribed and knew the contents thereof, and that the same was true according to the best of his knowledge and belief.

Before me—

L. B. GIBSON,
Probate Judge.

In the matter of the estate of John A. Parker, deceased.

On reading and filing the petition duly verified of John A. Parker, sr., representing that John A. Parker, jr., late of Omaha city, in said county, departed this life intestate, at Omaha city, on the 14th day of March, A. D. 1871, possessed of goods, chattels, and estate, in said county, of the estimated value of dollars, and praying that letters of administration of said goods, chattels, and estate be granted to John A. Horbach; thereupon it is ordered that Monday, the 8th day of May, A. D. 1871, at 10 o'clock a. m., at the court-house in said county, be assigned as the time and place for hearing said petition before the probate judge of said county. And it is further ordered that notice thereof be given to the heirs of said deceased, and to all other persons interested in said estate, by publication in the Omaha Herald, a newspaper printed and in general circulation in said county, for three successive weeks prior to said day of hearing.

Dated March 22nd, 1871.

L. B. GIBSON,
Probate Judge.

120 *Exhibit "3."*

Be it remembered that heretofore, to wit, on the 13th day of October, 1873, John A. Horbach, administrator of estate of John A. Parker, jr., deceased, filed in the said clerk's office his petition, which said petition is as follows, to wit:

District court of Nebraska, in and for Douglas county.

In the matter of the estate of John A. Parker, jr., deceased.

The petition of John A. Horbach, administrator of said estate, shows that on or about the 14th day of March, A. D. 1871, John A. Parker, jr., died intestate, and that on the 2d day of June, A. D. 1871, the said John A. Horbach, petitioner, was duly appointed administrator of the estate of the said John A. Parker, jr., deceased, by the probate court of said Douglas county, and that he ever since has been and still is such administrator, having duly qualified and given the bond required by law as such administrator in the sum of three thousand dollars. That the property of said estate consisted principally of land situated in said Douglas county. That there was and still are debts and liabilities against said estate as proven before said probate court, and remaining unpaid, amounting in all to about the sum of $10,183.89.

That there are no assets in the hands of said administrator belonging to said estate to pay said debts and liabilities, and that it is neces-

sary to sell the real estate belonging to said estate to pay said debts and liabilities. That the said real estate consists of unimproved city lots in the city of Omaha, and which are described as follows, to wit: lots (11 and 12) eleven and twelve in block six (6); lots one, two, three, four, five, six, nine, ten, eleven and twelve (1, 2, 3, 4, 5, 6, 9, 10, 11 & 12)
121 in block eight (8); all of block nine (9) and lots seven, eight, and nine in block seven in Parker's addition to the city of Omaha; lots seven, eight, and nine (7, 8, & 9) in block three (3) in Horbach's 2nd addition to Omaha; lot five (5) in block 460; lot one in block 481; lot ten in block 432; lot eleven in block 464; lot two in block 429, and lot one in block 497, in South Omaha; and lots seven and eight in block 8 in Parker's addition to Omaha; which last-named two lots are subject to a mortgage to one Sturtevant for $309 and interest from March 15th, 1871; and also lots (number and condition unknown) in the town of Decatur, in Burt county and state of Nebraska; also lots 8, 9, 10, 11, 12, 13, and 14 in block four (4); also lots 7, 8, 9, 10, 11, and 12 in block five; and lots 3, 4, 5, and 6 in block seven (7) in Parker's addition to Omaha; which said last-named seventeen lots are subject to a contract for the conveyance of the same in satisfaction and payment of the sum of $3,400.00 due from said decedent to John A. Parker, senior, and for value by him transferred to John A. Horbach, who is now the owner of and entitled to all the interest in said contract.

Wherefore your petitioner asks that a license and order of sale may be granted by this honorable court to sell the said real estate, or so much thereof as shall be necessary to pay said debts and liabilities and costs.

JOHN A. HORBACH, *Adm.*,
By B. E. B. KENNEDY, *Att'y.*

STATE OF NEBRASKA, } *ss.*
Douglas county, }

I, John A. Horbach, on oath, say: I am the petitioner named in the foregoing petition, and that I believe the facts stated
122 therein to be true.

JOHN A. HORBACH.

Subscribed in my presence and sworn to before me this 1st day of September, 1873.

GEO. B. LAKE, *Judge.*

And afterwards, to wit, on the 13th day of October, 1873, plaintiff filed in said clerk's office a proof of publication, which said publication is as follows, to wit:

STATE OF NEBRASKA, } *ss.*
Douglas county, }

B. H. Barrows, being duly sworn, deposes and says that he is treasurer Omaha Weekly Republican, a newspaper printed at Omaha,

in said county of Douglas; that the printed notice hereto attached was published in the said weekly newspaper four consecutive weeks next after and including the 13th day of Sep., A. D. 1873. The said newspaper was during that time in general circulation in the county of Douglas and state of Nebraska.

(Signed) B H. BARROWS.

Sworn to and subscribed in my presence before me, this 13th day of Oct., 1873.

[SEAL.] WM. WALLACE,
Notary Public.

Notice.

In the matter of the estate of John A. Parker, jr., deceased.

It being made to appear upon the petition of John A. Horbach, administrator of said estate, that there is not sufficient assets of said estate to pay the debts and liabilities of said estate, and that it is necessary to sell estate, therefore it is ordered by the court that all persons interested in said estate be and appear before this
123 court on the 13th day of October, A. D. 1873, at 10 o'clock in the forenoon, at the court-house in the city of Omaha, in Douglas county and state of Nebraska, then and there to show cause why a license should not be granted to sell the real estate of said estate, and that the order be published in the Omaha Weekly Republican for four consecutive weeks before said day of hearing.

September 1, 1873. GEO. B. LAKE, *Judge.*

And afterwards, to wit, at the October term of said court, and on the 15th day of October, 1873, an order was made as follows, to wit:

In the matter of the estate of John A. Parker, jr., dec'd.

This matter came on to be further heard upon the petition of the administrator on file, notice of the time and place of the hearing heretofore ordered in due form of law, and the court having examined all the proofs and allegations of the parties interested, and a hearing had in open court, do find that it is necessary to sell the real estate of said decedent to pay the debts and charges of settling said estate.

Wherefore it is ordered and adjudged by the court that the said administrator, John A. Horbach, proceed to sell, at public vendue, according to law, the real estate belonging to the said estate of John A. Parker, jr., deceased, to wit, lots eleven and twelve in block six; lots one, two, three, four, five, six, nine, ten, eleven, and twelve, in block eight; all of block nine; lots eight, nine, ten, eleven, twelve,

thirteen, and fourteen, in block four; lots seven, eight, nine, ten, eleven, twelve, in block five; and lots three, four, five, and six, in block six, all in Parker's addition to the city of Omaha, in
124 Douglas county and state of Nebraska; also lots seven, eight, and nine, in block three, in Horbach's second addition to Omaha; also lot five in block 460; lot one in block 481; lot ten in block 486; lot nine in block 449; lot ten in block 432; lot eleven in block 464; lot two in block 429; and lot one in block 497, in South Omaha, all in Douglas county and state of Nebraska; and lots seven and eight, in block eight, in said Parker's addition to Omaha, which last named two lots are subject to a certain mortgage to one Sturtevant for $309.00, and interest from March 15, 1871; and that he will make report to this court of said sale, and all his proceedings therein, to this court, with all convenient speed.

And afterwards, to wit, on the 23rd day of October, 1873, the said administrator filed in the said clerk's office a motion, which said motion is as follows, to wit:

District court, Douglas county.

In the matter of the estate of John A. Parker, jr., dec'd. } Motion.

Now comes the petitioner, John A. Horbach, adm'r of said estate, and moves the court to correct the order of license to sell the real estate and make it conformable to the said petition and correct the journal entry in this, that by an omission and mistake said order does not describe certain of the property and interests of said estate and omits certain property embraced in the original findings of the court.

B. E. B KENNEDY,
Att'y for Petitioner.

And afterwards, to wit, at the October term of said court, and on the said 23rd day of October, 1873, an order was made as follows, to wit:

125 In the matter of the estate of John A. Parker, jr, dec'd. }

This matter came on to be further heard upon the petition of the administrator on file, notice of the time and place of the hearing heretofore ordered by this court having been duly published according to law, and the court having examined all the proofs and allegations of the parties interested, and a hearing had in open court, do find that it is necessary to sell the said real estate to pay the debts against said estate and costs of administering the same.

Therefore it is ordered and adjudged by the court that the said

administrator, John A. Horbach, be, and he is hereby, licensed to sell according to law, at public vendue, the real estate belonging to the said estate of said John A. Parker, jr., deceased, situate and being in Douglas county and state of Nebraska, and described as follows, to wit: Lots eleven and twelve in block six; lots one, two, three, four, five, six, nine, ten, eleven, and twelve in block eight; all of block nine, and lots seven, eight, and nine in block seven; all in Parker's addition to the city of Omaha; also lots seven, eight, and nine in block three in Horbach's second addition to the city of Omaha; also lot five in block 460, lot one in block 481, lot ten in block 486, lot nine in block 449, lot ten in block 432, lot eleven in block 464, lot two in block 429, and lot one in block 497, in South Omaha; also lots eight, nine, ten, eleven, twelve, thirteen, and fourteen in block four (4); also lots seven, eight, nine, ten, eleven, and twelve in block five, and lots three, four, five, and six in block seven in Parker's said addition, subject to a certain contract by said
126 decedent to John A. Parker, sr., for the payment of $3,400.00, &c., dated September 7, 1870, and interest; also lots seven and eight in block eight in Parker's said addition to Omaha, subject to a certain mortgage to one Sturtevant for $309.00, and interest from March 15th, 1871, and that he will make due report of said sale and all its proceedings therein to this court with all convenient speed.

And afterwards, to wit, on the 25th day of November, 1873, the said administrator filed in the said clerk's office his report of sale, which said report is as follows, to wit:

In the matter of the estate of J. A. Parker, jr., deceased.

To the honorable district court of Nebraska, in and for Douglas county:

The undersigned, administrator of said estate, reports unto said court as follows, to wit: In pursuance of the order and license of said court hereto annexed, and after being duly sworn according to law, which oath was in writing and is annexed to said order, I did on the 25th day of October, A. D. 1873, give notice of the time and place of sale, of all of the said real estate described in said license and order of sale, that I would offer and sell said real estate at public vendue on the seventeenth day of November, A. D. 1873, commencing at 10 o'clock in the forenoon and holding said sale open for one hour thereafter at the court house in the city of Omaha, in Douglas county and state of Nebraska, by causing said notice to be published for three consecutive weeks next after said 25th day of October, 1873, and for three weeks prior to said day of sale, in the Omaha Weekly Republican, a newspaper printed at Omaha, in Douglas county and state of Nebraska, and in general circulation in said Douglas county, and did also post

up like notices in three of the most public places in said
127 Douglas county. That on the said 17th day of November, A. D. 1873, at the hour of ten o'clock in the forenoon, at the court-house in said city of Omaha, and being the time and place named in said notices, I offered all of said real estate at public vendue, and holding said sale open for one hour, I did at half-past eleven o'clock in the forenoon strike off and sell said property to J. E. House, Herman Kountze, and B. E. B. Kennedy, as hereinafter stated, respectively, to wit: To the said J. E. House—lot 11 in block 6, at the sum of fifty dollars; lot 12 in block 6, at the sum of sixty dollars; lot seven in block 7, at the sum of seventy-five dollars; lot eight in block 7, at the sum of fifty dollars; lot nine in block seven, at the sum of fifty dollars; lot one in block eight, at the sum of one hundred dollars; lot two in block eight, at the sum of seventy-five dollars; lot 3 in block 8, at the sum of seventy-five dollars; lot 4 in block 8, at the sum of sixty dollars; lot 5 in block 8, at the sum of sixty dollars; lot 6 in block 8, at the sum of one hundred dollars; lot 9 in block 8, at the sum of seventy-five dollars; lot 10 in block 8, at the sum of seventy dollars; lot 11 in block 8, at the sum of seventy dollars; and lot 12 in block 8, at the sum of one hundred dollars; also lot 2 in block 9, at the sum of sixty-five dollars; lot eight in block 9, at the sum of eighty dollars; lot 4 in block 9, at the sum of sixty-five dollars; lot 5 in block 9, at the sum of seventy dollars; lot 6 in block 9, at the sum of eighty dollars; lot 11 in block 9, at the sum of seventy-five dollars; lot 12 in block 9, at the sum of seventy-seven dollars; lot 13 in block 9, at the sum of eighty-two and 50-100 dollars; and lot 14 in block 9, at the sum of one hundred and five dollars; *also* lots 8, 9, 10, 11, 12, 13, and 14 in block 4; lots 7, 8, 9, 10, 11, and 12 in block 5; and lots 3, 4, 5, and 6 in block 7, at and for the sum of one dollar each, subject to a certain contract and lien on said last named
seventeen lots belonging to John A. Horbach for $3,400 and
128 interest thereon from September 7th, 1870, all of the above-described property being in Parker's addition to the city of Omaha; also to the said J. E. House, lot 7 in block 3, at the sum of $160; lot 8 in block 3, at the sum of $160, and lot 9 in block 3, at the sum of $165, all in Horbach's second addition to the city of Omaha, he, the said J. E. House, being the highest bidder for said lots, and the said sums being the highest sums bidden for each of said lots respectively.

To the said Herman Kountze, lot 1 in block 9, at the sum of one hundred dollars; lot 7 in block 9, at the sum of one hundred and two and 50-100 dollars, all in Parker's addition to the city of Omaha; also lot five in block 460, lot 10 in block 486, lot 9 in block 499, lot 10 block 432, lot 11 in block 464, lot 2 in block 429, at and for the sum of one dollar each, and lot one in block 497, at and for the sum of three and 50-100 dollars, all in South Omaha, Douglas county and state of Nebraska.

To the said B. E. B. Kennedy, lot 8 in block 9, at the sum of one

hundred and five dollars; lot 9 in block 9, at the sum of seventy dollars, and lot 10 in block 9, at the sum of eighty-seven and 75-100 dollars; also lots 7 and 8 in block 8, at and for the sum of one dollar each, subject to a certain mortgage for $309, and interest from March 15th, 1871, all in Parker's addition to the city of Omaha; also lot 1 in block 481, in South Omaha, at the sum of five dollars, they, the said Kountze and Kennedy, then and there being the highest bidders for said several lots respectively, and said sums being the highest sums bidden for said lots respectively, and all of the said foregoing property being in Douglas county and state of Nebraska, amounting in all to the sum of $2,753.25; all of which is respectfully submitted.

JOHN A. HORBACH,
Administrator.

129 And afterwards, to wit, at the October term of said court, and on the 25th day of November, 1873, an order was made as follows, to wit:

In the matter of the estate of John A. Parker, jr., deceased.

The motion of the administrator to confirm the sale made by him herein coming on to be heard, it is ordered that cause be shown by the 5th day of December next why said sale should not be confirmed.

And afterwards, to wit, on the 15th day of December, 1873, William R. Vaughn and John Wray filed in the said clerk's office their exceptions to said sale; which said exceptions are as follows, to wit:

District court, Douglas county.

Exceptions to order.

In the matter of the estate of John A. Parker, jr., deceased.

Now comes William R. Vaughn and John Wray, copartners, under the firm-name of Vaughn and Wray, and creditors of the said estate, and object to the confirmation of the sale herein, and thereupon make and file the following exceptions, to wit:

1st. That said sale is void, for the reason that the administrator making the sale did indirectly purchase and was interested in the purchase of a part of the real estate so sold.

2nd. That the proceedings were unfair.

3rd. That the sum bid is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of the expenses of a new sale, may be obtained.

4th. That of said lots were sold subject to lien thereon, after such lien had been proven and allowed in the probate court.

130 SAVIDGE & MANDERSON,
Att'ys for said Vaughn & Wray.

And afterwards, to wit, at the October term of said court, and on the 16th day of December, 1873, an order was made as follows, to wit:

In the matter of the estate of John A. Parker, jr., deceased.

This matter came on to be further heard upon the report of sale of the real estate by the administrator on file and the exceptions thereto, filed by William R. Vaughn and John Wray, creditors of said estate, and the court having examined all the proceedings relative to said sale, and having also examined the said administrator and other persons on oath touching the same, and having heard the parties interested and the arguments of their respective counsel, and having duly considered the same, it is adjudged by the court that the sale of the following described property was legally made and fairly conducted; that the said several sums bid for said property was not disproportionate to the value of said property, and that a greater sum than that for which said several descriptions of property were respectively sold cannot be obtained, to wit: lots eleven and twelve in block six; lots seven, eight and nine in block seven; lots one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block eight, and lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in block nine, all in Parker's addition to the city of Omaha; also lots seven, eight and nine in block three in Horbach's second addition to the city of Omaha; also lot five in block 460; lot ten in block 486; lot nine in block 449; lot ten in block 432; lot eleven in block 464; lot two in block 429; lot one in block 497, and lot one in block 481

131 in South Omaha, all in Douglas county and state of Nebraska.

Whereupon it is ordered and adjudged by the court that said sale of each of the above described lots and real estate, and all the proceedings relative thereto, be, and the same is hereby, ratified and fully confirmed, and the court do further order and direct the said administrator of said estate to make, execute, and deliver to the said several purchasers of said property good and sufficient conveyances of said property. It is further considered and adjudged by the court that the sale of the following described property was not legally made, to wit: lots eight, nine, ten, eleven, twelve, thirteen, and fourteen, in block four; lots seven, eight, nine, ten, eleven, and twelve in block five; and lots three, four, five, and six in block seven, all in Parker's addition to the city of Omaha aforesaid. Whereupon it is ordered and adjudged by the court that said sale of the said last above described seventeen lots be, and the same is hereby, set aside

and vacated, and said administrator is directed to proceed and advertise and sell the same in all respects as if no previous sale had taken place, and report his proceedings therein to this court at its next term.

And afterwards, to wit, on the 25th day of February, 1874, the said administrator filed in the said clerk's office his report of sale, which said report is as follows, to wit:

District court of Nebraska, in and for Douglas county.

In the matter of the estate of John A. Parker, jr., dec'd.

To the honorable district court of Nebraska, in and for Douglas county:

132 The undersigned, administrator of said estate, makes further report to said court as follows, to wit: That in virtue of and pursuant to the order of this court, dated the 23rd day of October, A. D. 1873, and a subsequent order of this court entered on the 16th day of December, A. D. 1873, setting aside the sale of the real estate hereinafter described, and after being duly sworn according to law, which said oath was in writing, and is annexed to said first-named order, I did, on the 30th day of January, A. D. 1874, give notice that, on the 23rd day of February, A. D. 1874, at 10 o'clock in the forenoon at the court-house, in the city of Omaha, in Douglas county and state of Nebraska, I would offer for sale and, holding said sale open for one hour thereafter, would sell at public vendue said real estate, to wit: Lots eight, nine, ten, eleven, twelve, thirteen, and fourteen in block four; also lots seven, eight, nine, ten, eleven, and twelve in block five; also lots three, four, five, and six in block seven, all in Parker's addition to the city of Omaha, in Douglas county and state of Nebraska, by causing said notice to be published in the Omaha Weekly Republican for three successive weeks next preceding the day of sale, a newspaper published in and of circulation in said Douglas county; and did also post up like notices in three of the most public places in said Douglas county, and at the time and place stated in said notice (a copy of which said notice is hereto annexed) I duly offered said real estate at public vendue, and holding said sale open for one hour thereafter, to wit, at the hour of eleven o'clock a. m., did strike off and sell said real estate, in separate parcels, at public vendue, to B. E. B. Kennedy, at and for the sum of one dollar for each one of said lots, he, the said B. E. B. Kennedy, then and there being the highest bidder therefor.

JNO. A. HORBACH,
Administrator of estate of John A. Parker, jr.

133 STATE OF NEBRASKA, } ss.
Douglas county, }

I, John A. Horbach, on oath say I am the administrator of the estate of John A. Parker, jr., deceased. That I posted up the notices of the time and place of sale, a copy of which is annexed to the foregoing report of sale, and know that said notice was published and posted for three weeks next preceding the day of said sale. That said sale was fairly conducted in all respects, and that a greater sum than that for which said lots were sold respectively cannot be obtained for the same.

JNO. A. HORBACH.

Subscribed in my presence and sworn to before me this 25th day of February, 1874.

GEO. ARMSTRONG,
Clerk.

And afterwards, to wit, at the February term of said court and on the 2d day of March, 1874, an order was made as follows, to wit:

In the matter of the estate of John A. Parker, jr., deceased.

The motion to confirm the sale herein coming on to be heard, it is ordered that cause be shown by to-morrow morning why the said sale should not be confirmed.

Afterwards, at the February term of said court and on the 3d day of March, 1874, a confirmation of sale was entered herein, which reads and is as follows, to wit:

Confirmation in the matter of the estate of John A. Parker, jr., deceased.

This matter came on to be further heard on the second report of sale of the balance of said real estate and the motion of the
134 administrator for the confirmation of said sale, and the court having fully examined said report, and all the proceedings relative thereto, do find that said sale was legally made and fairly conducted, and that a greater sum cannot be obtained for said property; therefore it is ordered and adjudged by the court that said sale and all the proceedings relating to the same be, and the same is hereby, fully ratified and confirmed, and the said administrator is hereby directed to execute and deliver to the purchaser at such sale a good and sufficient deed of the said property.

THE STATE OF NEBRASKA, } ss.
Douglas county, }

I, Wm. H. Ijams, clerk of the district court in and for Douglas county, Nebraska, do hereby certify that the foregoing is a full and true transcript of the proceedings in the matter of the estate of John A. Parker, deceased, and all thereof appearing of record in said court.

Witness my signature and the seal of said court at the city of Omaha, this 11th day of November, A. D. 1879.

[SEAL.] WM. H. IJAMS, *Clerk.*

THE STATE OF NEBRASKA, } ss.
Third judicial district of said state, }

I, James W. Savage, presiding judge of the district court of the third judicial district of said state of Nebraska, and which said district includes the county of Douglas, do hereby certify that Wm. H. Ijams, whose genuine signature is affixed to the foregoing certificate, was at the date thereof clerk of the district court for Douglas county, Nebraska, and as such clerk the legal custodian of the records of said court; that the official acts and doings of said clerk
135 are entitled to full faith and credit, and that the said attestation is in due form of law.

I further certify that the Hon. George B. Lake was at the time of the adjudication of the before mentioned cause judge of the district court of Douglas county, in and for the second judicial district of the state of Nebraska.

JAMES W. SAVAGE, *Judge.*

THE STATE OF NEBRASKA, } ss.
Douglas county, }

I, Wm. H. Ijams, clerk of the district court for Douglas county, Nebraska, do hereby certify that James W. Savage, whose genuine signature is affixed to the foregoing certificate, is the presiding judge of said court, and that he was duly commissioned and qualified.

Witness my signature and seal of said court at the city of Omaha, this 20th day of November, A. D. 1879.

[SEAL.] WM. H. IJAMS, *Clerk.*

136 *Order for Letters.*

In the matter of the estate of John A. Parker, deceased. }

Pursuant to an order of this court made on the 22d day of March, A. D. 1871, assigning the 8th day of May, 1871, at 10 a. m., at the court-house, Douglas county, Nebraska, as the time and place for hearing the petition of John A. Parker, senior, praying that John

A. Horbach be appointed administrator of said estate and requiring that notice of said hearing be published in the Omaha Weekly Herald three successive weeks prior to said hearing; and it appearing that said notice has been published as required by said order, and no one appearing to oppose the appointment of said John A. Horbach, it is ordered that the said John A. Horbach be, and he hereby is appointed administrator of the estate of said deceased, and that letters of administration do issue on his giving bond in the sum of two thousand dollars with good and sufficient surety to be approved by this court, and taking the oath as required by law.

Dated May 8th, 1871.

L. B. GIBSON,
Probate Judge.

137 STATE OF NEBRASKA, } ss.
Douglas county, }

In the matter of the estate }
of }
John Parker, jr., deceased. }

Know all men by these presents, that we, John A. Horbach, as principal, and T. W. T. Richards as surety, within the state of Nebraska, are holden and stand firmly bound and obliged unto L. B. Gibson, judge of probate in and for the said county of Douglas, in the full sum of two thousand dollars, lawful money of the United States of America, to be paid unto the said probate judge, his successors in the said office or assigns, to the true payment whereof we do bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, for the whole and in the whole, firmly by these presents. Sealed with our seals.

Dated the 2d day of June, A. D. 1871.

Whereas, the above bounden John A. Horbach has been appointed administrator by the probate court of said county of Douglas, of the estate of John A. Parker, jr., late of said county of Douglas, deceased: Now, the condition of the present obligation is such, that if the above bounden John A. Horbach shall well and truly perform, observe, and keep the conditions following, to wit:

1st. That he shall make and return to the probate court aforesaid, within three months, a true and perfect inventory of all goods, chattels, rights, credits, and estate, of the said deceased, which shall come to his possession or knowledge, or the possession of any other person for him.

2d. That he shall administer according to law, all the goods, chattels, rights, credits, and estate of the said deceased, which shall at any time come to his possession, or to the possession of any other person for him, and out of the same pay and discharge all debts and charges chargeable on the same, or such dividends thereon as shall be ordered and decreed by the probate court aforesaid.

3d. That he shall render a just and true account of his adminis-

tration to the probate court aforesaid, within one year, and at any other time when required by such court. And

4th. That he shall perform all orders and decrees of the probate court aforesaid, by the said John A. Horbach to be performed in the premises; then the before written obligation to be void and of none effect, or else to abide and remain in full force and virtue.

JNO. A. HORBACH.
T. W. T. RICHARDS.

Signed, sealed, and delivered in presence of—
L. B. GIBSON.

DOUGLAS COUNTY, *ss.*

At a session of the probate court held at Omaha, Neb., on the 2nd day of June, A. D. 1871.

I have examined and do approve the foregoing bond, and order the same to be filed and recorded in the probate office of said county.

L. B. GIBSON,
Probate Judge.

138 In the matter of the estate of John A. Parker, jr., deceased.

John A. Horbach, administrator of the estate of said deceased, having taken the oath as required by law and entered into a bond to the probate judge of said county in the penal sum of two thousand dollars with T. W. T. Richards, his good and sufficient surety approved by me, it is thereupon ordered by me that letters of administration of the goods, chattels, and credits of said deceased be forthwith issued to the said John A. Horbach in the premises. And it is further ordered that six months be allowed for creditors to present their claims for adjustment and allowance and one year be allowed for settling up said estate from the 2nd day of June, A. D. 1871, and one year be allowed for settling up said estate from said last named date.

And it is further ordered that William J. Kennedy and Lewis S. Reed, two disinterested persons of Douglas county, Nebraska, be appointed appraisers of the estate of said deceased.

And it is further ordered that notice be given to creditors of said estate to appear at the court-house in Douglas county, Nebraska, on the 14th day of August, A. D. 1871, at 2 p. m., by publication in Omaha Weekly Herald, a newspaper printed and in general circulation in Douglas county, Nebraska, four weeks successively prior to the 14th day of August, A. D. 1871, and by posting up notices to said creditors in the four following public places in said county, to wit, at the court-house, at the post office, at the Omaha meat market, and at Hunt's livery stable, for the purpose of presenting their claims for adjustment and allowance.

L. B. GIBSON,
Probate Judge.

139 STATE OF NEBRASKA, } ss.
County of Douglas, }

In the matter of the estate }
of }
John A. Parker, jr., deceased. }

By L. B. Gibson, judge of probate for said county, to John A. Horbach, of said county, greeting:

Whereas, John A. Parker, jr., lately departed life intestate, being at or immediately previous to his death an inhabitant of the county of Douglas, and having, while he lived, and at the time of his decease, estate within the county of Douglas, to be administered, whereby the power of committing administration and full disposition of and singular the goods, chattels, rights, credits and estate whereof the said deceased died possessed in the state of Nebraska, and also the hearing, examining and allowing the account of such administration doth appertain unto me, and you having given a bond in the premises which has been duly approved and filed as required by law in that behalf: now, therefore, trusting in your care and fidelity, I do by these presents commit unto you, the said John A. Horbach, full power by these presents to administer and faithfully dispose of, according to law, all and singular the goods, chattels, rights, credits, and estate of said deceased, within the state of Nebraska, which shall at any time come to your possession, or to the possession of any other person for you, and to ask, gather, levy, recover and receive all the goods, chattels, rights, credits, and estate whatsover of said deceased, which to him while he lived and at the time of his death did belong, and to pay and discharge all debts and charges chargeable on the same, or such dividends thereon as shall be ordered and decreed by said court: hereby requiring you to make and return to said court, within three months, a true and perfect inventory of all the goods, chattels, rights, credits, and real estate of said deceased, which shall come to your possession or knowledge, or to the possession of any other person for you, and also to render a just and true account of your administration to said court within one year, and at any other time when required by said court, and to perform all orders and decrees of court by you to be performed in the premises.

In witness whereof I have hereunto set my hand and the seal of said probate court at Omaha, Neb., the 2d day of June, A. D. 1871.

L. B. GIBSON,
Probate Judge.

140 By L. B. Gibson, judge of probate for said county:

In the matter of the estate }
of }
John A. Parker, deceased. }

To William J. Kennedy and Lewis S. Reed, of said county, greeting:

You are hereby empowered, as two suitable and disinterested per-

sons, according to your best skill and judgment, truly and justly to appraise, as soon as may be, in dollars and cents all the estate and effects, both real and personal, comprised in the inventory of the estate of John A. Parker, jr., late of Omaha city, in said county, deceased, which may be in said county of Douglas, according to the present value thereof, being first sworn to the faithful performance of that trust.

And when you shall have performed that service as aforesaid, you are to deliver the said inventory, together with this warrant, and your doings thereon, to John A. Horbach, administrator of the goods and estate of the said deceased, who is hereby accordingly directed so to return and exhibit the same on oath in the probate office of said county of Douglas within three months from the time of taking upon him that trust.

Witness the said L. B. Gibson, judge of probate, as aforesaid, under his hand and seal of said court at Omaha, this 12th day of September, in the year of our Lord one thousand eight hundred and seventy-one.

L. B. GIBSON,
Probate Judge.

COUNTY OF DOUGLAS, *ss.*

The 27th day of October, A. D. 1871, then personally appeared Lewis S. Reed and William J. Kennedy, appraisers above named, and made oath that they would faithfully discharge the trust to which they are appointed by the above warrant.

Sworn before me.

(Signed) L. B. GIBSON,
Probate Judge.

141 *Inventory.*

COUNTY OF DOUGLAS, *ss.*

A true and perfect inventory of all the real estate, goods and chattels, rights and credits of John A. Parker, late of Omaha city, in the county of Douglas, deceased, which are by law to be administered, made by John A. Horbach, of Omaha, Douglas county, Neb., administrator of said deceased. That is to say:

In Parker's addition to Omaha.

Block 4, lots 8, 9, 10, 11, 12, 13 and 14, 21, $250 each	$1,750	00
Block 5, lots 7, 8, 9, 10, 11 and 12	1,500	00
Block 6, " 11 and 12	550	00
Block 7, " 3, 4, 5, 6, 7, 8 and 9	1,750	00
Block 8, " 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12	2,500	00
Block 9, " fourteen lots embracing all of block nine	3,500	00

Lots in Horbach's 2nd addition to Omaha.

Block 3, lots 7, 8 and 9 in ———	$1,200	00
Also an interest in and to a portion of the east two-thirds of lots one hundred and twenty-one (121) in the city of Omaha, (title defective)	500	00

Lots in South Omaha.

Block 460, lot (5) five	$	50	00
" 481, " (1) one		50	00
" 486, " (10) ten		50	00
" 449, " (9) nine		50	00
" 432, " (10) ten		10	00
" 464, " (11) eleven		1	00
" 429, " (2) two		10	00
" 497, " (1) one		50	00
Block of Parker's addition, lots 7 and 8 on mortgage of J. M. Buck to secure payment of Buck's note to J. A. Parker for $800, and by Parker assigned on mortgage to H. D. Sturtevant, Dec. 15, 1870, to secure loan on his note of $309 and int. after maturity on March 15, '71		100	00

142 (Lots in the town of Decatur, Burt county, Neb.)

We, the undersigned appraisers, appointed by the judge of probate for the county of Douglas, by virtue of the foregoing warrant, having first taken the oath prescribed by law for the faithful discharge of the trust under such appointment, do hereby certify that we have truly and justly estimated and appraised all the estate and effects of John A. Parker, jr., late of Omaha city, in said county, deceased, as exhibited to us, and comprised in the foregoing inventory, according to the best of our skill and judgment, at the respective sums placed opposite each item therein mentioned.

Dated October 27th, 1871.

WILLIAM J. KENNEDY,
LEWIS S. REED,
Appraisers.

STATE OF NEBRASKA, } *ss.*
County of Douglas, }

In the matter of the estate of John A. Parker, jr., deceased.

John A. Horbach, administrator of the estate of said John A. Parker, deceased, personally appeared and made oath that the foregoing is a true and perfect inventory of all the estate of deceased that hath come to his hands and knowledge, and that if he shall hereafter become possessed of any further assets belonging to the estate of said deceased he will give it into the probate office of said county, to be of record therewith.

J. A. HORBACH,
Administrator.

Sworn to and subscribed before me this 27th day of October, A. D. 1871.

L. B. GIBSON,
Probate Judge.

143 STATE OF NEARASKA, } ss.
Douglas county, }

At a probate court held at the court-house in and for said county on the 24th day of May, 1873.

Present—Robert Townsend, probate judge.

In the matter of the estate of John A. Parker, jr., deceased.

Allowance of Claims.

It appearing by due proof on file that the notice to creditors for the examination, adjustment, and allowance of claims before me on this day has been duly published and posted pursuant to the order of this court heretofore made herein and as required by law, and upon due examination in the premises—

It is ordered, adjudged, and decreed that the claims of the several claimants named in the annexed schedule, marked Schedule "A," be, and the same hereby are, allowed at the respective sums set opposite the name of each claimant in the column of said schedule under the words "amount allowed, including interest."

ROB. TOWNSEND,
Probate Judge.

144 STATE OF NEBRASKA, } ss.
County of Douglas, }

Schedule of claims against the estate of John A. Parker, jr., deceased, adjudged by the probate court to be valid and subsisting amount claimed, nature of claim, and amount allowed:

Claimants.	Amount of claim.	Nature of claim.	Amount allowed, including interest.
William R. Vaughn and John Wray	$1,751 63	Judgment	$1,751 63
John Sparks	20 70	Expense of last sickness	20 70
Dr. P. H. Hale	118 00	" "	118 00
John Welker	11 75	" "	11 75
John Wirth	3 55	" "	3 55
Grist & Peycke	3 20	" "	3 20
G. H. & J. S. Collins	2 00	" "	2 00
Douglas Co., Nebraska.	69 00	Taxes	69 00
Douglas Co., Nebraska.	64 40	"	64 40
A. & H. Kountze	100 00	Promissory note	100 00
R. L. Parker	80 16	" "	80 16
George Medlock	12 50	Funeral expenses	12 50
City of Omaha	60 00	Taxes	60 00
City of Omaha	56 00	"	56 00

John Webb		13 50	Rent		13 50
J. M. Buck		39 65	Goods sold		39 65
Dewey, Trimble & Co.		13 00	" "		13 00
J. K. Ish & Co		32 15	Expenses of last sickness		32 15
L. B. Gibson		25 25	Probate fees		25 25
T. W. T. Richards		12 10	Expense of last sickness		12 10
J. A. Horbach		13 75	" "		13 75
	Milan Hunt	21 50	Funeral expense		21 50
145	Peck & Moore	45 00	Expense of last sickness		45 00
	Gish & Jacobs	195 23	Funeral expense		195 23
Wilbur & Sprague		16 50	" "		16 50
Miller & Richardson		3 00	Printing bill		3 00
John Clark		10 00	Funeral expense		10 00
John F. Coggman		13 00	" "		13 00
E. H. Den		56 00	Physician bill		56 00
Byron Reed		4 00	Map sold		4 00
J. H. Stein		15 75	Clothing bill		15 75
S. H. Rice		300 00	Promissory note		300 00
J. A. Horbach		1,000 00	do do		1,000 00
J. A. Horbach		5,334 00	Claim of J. A. Parker, sr., assigned.		5,334 00
Samuel V. Niles		78 15	Bill of costs		78 15
Douglas county, Nebraska		75 04	Taxes		75 04
City of Omaha tax		52 90	"		52 90
City of Omaha		56 00	"		56 00
City of Omaha		15 72	"		15 72
City of Omaha		103 33	"		103 33
City of Omaha		13 60	"		13 60
County of Douglas, Neb		19 53	"		19 53
County of Douglas, Neb		105 39	"		105 39
Omaha Republican		6 25	Legal advertising		6 25
Rob. Townsend		6 30	Probate fees		6 30

146 STATE OF NEBRASKA, } *ss.*
Douglas county, }

At a court held at the court-house in and for said county March 12, A. D. 1873: Present, Rob't Townsend, probate judge.

In the matter of the estate of John A. Parker, jr., deceased.

Order for Hearing for Extension.

On filing the duly verified petition of John A. Horbach, administrator of said estate, praying that the time for the settlement of said estate be extended until June 2, 1873:

Ordered, that April 5th, A. D. 1873, at ten o'clock a. m., is assigned for hearing said petition, when all persons interested in said matter may appear at a probate court to be held at the court-house in and for said county, and show cause why the prayer of petitioner should not be granted; and that notice of the pendency of said petition and the hearing thereof be given to all persons interested in said matter, by publishing a copy of this order in the Omaha Weekly Republican, a newspaper printed in said county, for three successive weeks prior to said day of hearing.

ROB'T TOWNSEND,
Probate Judge.

147 STATE OF NEBRASKA, } ss.
Douglas county, }

At a probate court held at the court-house in and for said county, April 5, 1873. Present, Robt. Townsend, probate judge.

In the matter of the estate of John A. Parker, jr., dec'd.

Order for extension and as to claims.

Whereas, by an order of this court made in this matter, March 12, 1873, this day was assigned for hearing the petition of John A. Horbach, administrator of said estate, praying the time for the settlement of said estate be extended until June 2, 1873, in and by which order it was required that notice of the pendency of said petition, and the hearing thereof, be given to all persons interested in this matter, by publishing a copy of said order in the Omaha Weekly Republican, a newspaper printed in said county, for three successive weeks prior to said day of hearing:

Now comes the said petitioner, no one appearing to the contra, and being satisfied by affidavit on file that said publication has been duly made as required by said order, and being satisfied from said petition that the aforesaid prayer thereof ought to be granted;

It is ordered that the time for settling said estate be and is hereby extended until June 2, 1873; and whereas the said petition filed in this court March 12, 1873, further prays that the time heretofore allowed for creditors of said estate to present their claims for examination, adjustment and allowance be extended, and being satisfied that such prayer ought to be granted;

It is further ordered, that the time heretofore allowed for creditors of said estate to present their claims for examination, adjustment and allowance be and the same is hereby extended from this date until May 24, 1873. And it is further ordered that
148 notice be given to such creditors to appear before me at the court-house, Douglas county, Neb., on May 24, 1873, at 10 o'clock, a. m., by publication in the Omaha Weekly Republican, a newspaper printed and in general circulation in said county, four

weeks successive prior to May 24, 1873, and by posting up notices to said creditors in four public places in said county, on or before April 11, 1873, for the purpose of presenting their claims for examination and adjustment and allowance.

ROB. TOWNSEND,
Probate Judge.

STATE OF NEBRASKA, } ss.
Douglas county, }

At a probate court held at the court-house, in and for said county, on the 17th day of April, 1873. Present, Rob. Townsend, probate judge,

In the matter of the estate of John A. Parker, jr., deceased.

This day came William R. Vaughn and John Wray, and filed in this court a certificate given by the clerk of the district court for said county, showing that on November 22, 1872, a judgment was rendered in said court in favor of said William R. Vaughn and John Wray, and against John A. Parker, sr., and John A. Horbach, administrator, &c., of John A. Parker, jr., for the sum of $1,731.75, and costs amounting to $19.88, and that the full amount of said judgment, with interest thereon from November 11, 1872, is still due and unpaid.

ROB. TOWNSEND,
Probate Judge.

149 Probate court, Douglas county.

In the matter of the estate of John A. Parker, jr.

To Hon. Wm. L. Peabody, probate judge:

The undersigned, administrator of said estate, represents, unto said court that he has received as such administrator, as the proceeds from the real estate belonging to said deceased, and from other sources, the sum of $2,770.60 in all, an itemized account of which is hereto annexed, marked "Exhibit A." That the said amount is all that has come into his hands as such administrator, or to his knowledge, except certain supposed lots or lands in the town of Decatur, in this state, but the numbers or description of which your petitioner is not able to give. That your petitioner is investigating such matter, and if title to any such lots or lands shall be found to be in said estate, your petitioner will apply to the district court for a license to sell the same.

That your petitioner has paid certain preferred claims and lia-

bilities of said estate, including taxes on the real estate, funeral expenses and expenses of last sickness, and costs incurred in the settlement of said estate, and interest on moneys advanced therefor, amounting in all to the sum of $1,473,80, an itemized account of which is also hereto annexed and marked "Exhibit B," leaving the sum of $1,296.80 in the hands of the administrator to be distributed among the remaining creditors. Your petitioner prays that his said accounts may be examined and allowed, and an order for the final distribution of said remaining estate may be made among the creditors of said estate as provided by law.

JNO. A. HORBACH,
Administrator.

150 STATE OF NEBRASKA, } ss.
Douglas county, }

I, John A. Horbach, on oath say, I am administrator of the estate of John A. Parker, jr., dec'd; that the statements in the foregoing petition, and all the items in the annexed exhibits, are just and correct, as I verily believe.

JNO. A. HORBACH.

Subscribed in my presence and sworn to before me this 9th day of April, A. D. 1874.

WM. L. PEABODY,
Probate Judge.

"Exhibit A."

Jno. A. Horbach, administrator, in account current with estate of Jno. A. Parker, jr., deceased.

		Dr.
1872.	For amount cash collected on condemnation of right of way for O. & S. W. R. R. through lots in South Omaha or Grandview, belonging to estate of Jno. A. Parker, jr.....	$17 35
1873.	Am't collected from sales by administrator Nov. 17, '73, and confirmed Dec. 16, '73.....	2,736 25
1874.	Am't collected from 2nd sale of 17 lots subject to to claim of $3,400.00.....	17 00
		$2,770 60
		Cr.
	By amount paid on preferred claims for funeral expenses, attendance of last sickness, and taxes delinquent on property of estate and int. on same, for sums advanced estate per accompanying statement, including attorney's services, costs, and services of administrator ...	$1,473 80
151	Bal. funds in hands administrator.....	$1,296 80

"Exhibit B."

Estate of Jno. A. Parker, deceased, in acct. with Jno. A. Harbach, adm.

1871. For claims allowed in probate court, viz:

Mch.	21.	Jno. Sparks, attendance on Parker during sickness...	$20 70	$20 70
	29.	Dr. P. H. Hale, physician in attendance.....	118 00	118 00
April	18.	Jno. Welker, meals to Parker's room while sick.....	11 75	11 75
"	"	Jno. Wirth.....	3 55	3 55
"	"	Geist & Peycke	3 20	3 20
"	"	G. H & J. S. Collins, 1 p'r slippers for burial.....	2 00	2 00
	29.	County tax paid for 1870, on 15 lots, estate.....	69 00	69 00
		County tax paid for 1870 on 14 lots, estate.....	64 40	64 40
May	3.	A. & H. Kountz, note in b'k, $12 due.....		100 00
"	6.	R. L. Parker, (ch. funds)...		80 16
"	30.	Geo. Medlock, digging grave	12 50	12 50
June	10.	City taxes paid for 1870, for delinquent on 15 lots....	60 00	60 00
"		City tax paid for 1870, delinquent on 14 lots.....	56 00	56 00
July	6.	Jno. Webb, for rent for Parker's room.....		13 50
152	7.	Claim on cancelled check, $100, not allowed.		
Sept.	1.	J. W. Burk, bill of merchandise.....		39 65
"	10.	Dewey & Trimble, furniture bill.....		13 00
"	13.	Milan Hunt, livery to funeral	21 50	21 50
"	"	J. K. Ish, medicine bill...	32 15	32 15
"	"	L. B. Gibson, for fees probate court and publict'n,	25 25	25 25
"	14.	T. W. T. Richards, paid telegram to Parker's family.		12 00
"	"	J. A. Horbach, paid to and from.....		13 75
"	"	Dr. Peck and Moore, consulting physicians.....	45 00	45 00
"	15.	Gish and Jacobs, coffin and funeral expenses.....	195 23	195 23
"	19.	Wilbur & Sprague, livery to funeral.....	16 50	16 50

Sept.	20.	Miller & Richardson.....		$3 00
"	22.	J. F. Coffman livery to funr'l	13 00	13 00
"	"	John Clark.....	10 00	10 00
"	27.	R. Wright, claim for board bill, not allowed.....		
		B. Reed, map bill.....		4 00
		J. H. Stein, clothing bill...		15 75
1872.				
May	14.	S. H. Rice, mortgage note of $300.00, 12 per cent., due Feb. 11, 1871.....		300 00
153		Int. from Feb. 11, 1871, to Dec. 16, 1873, 2 years 9 months.....		99 00
April	10.	S. V. Niles' bill, costs Sup. Court		
"		Parker *vs.* Laity.....		78 15
"	30.	Paid county tax for 1871 on 15 lots, estate.....	75 04	75 04
		Paid city tax for 1871 on 15 lots, estate.....	52 90	52 90
		Paid county tax for 1871, Horbach 2nd add.....l.....	19 53	19 53
		Paid city tax for 1871, Horbach 2nd add.....	13 60	13 60
1873.		John A. Horbach's note, J. A. Parker, jr., Dec. 20, 1876, 6 months.....		1,000 00
		John A. Horbach claims of J. A. Parker, jr., assigned after 12 per cent, M'h 20, 1871, for $8,734.00, less amount secured on bond $3,400.00, and 17 lots, diff.....		5,334 00
		Wm. R. Vaughn, John Wray claim on judgment, November 22, 1872, and costs, filed by Savage and Manderson, attorneys..		1,751 63
May	24.	Paid probate c't fees, Townsend.....	6 30	6 30
		Omaha Republican, publishing notices.....	6 25	6 25
154		Stamp on bond and letters administration	3 50	3 50
Dec.	16.	Interest on am'ts advanced for delinquent taxes, viz.: from April 29, '71, $64.40,		

	$69.00—$133.40—2 yrs. 7½ months, 10 per cent...	$35 03		
	From June 10, '71, $60.00, $56.00—$116.00—2 yrs. 6 mos., 10 per cent.....	29 00		
	From April 30, 73, $75.40, 1 year 7½ mos., 10 per cent.....	12 24		
	From May 22, '72, $52.90, 1 year 6 mos., 10 per cent	8 15		
	From May 22, '72, $19.53, $13.60—$33.13—1 year 6⅓ mos., 10 per cent.....	5 05	89 47	
Dec.	16. Interest on cash advanced to pay above preferred accounts for expense of funeral and attendance of last sickness, viz.: $20.70, $118.00, $12.50, $21.50, $25.25, $195.93, $16.50, $13.00, $10.00; total amt, $432.68, 10 per cent. from Jan'y 1, '72, to Dec. 16, '73, 1 year 11½ mos.....	84 70	84 70	
1874.				
April	7. Paid Omaha Republican, publishing notices for order of sale, Oct. '73, sale Nov., 73, and second sale Feb., 1874	23 00	23 00	
155	Paid acknowledgm't deeds, Administrator	1 50	1 50	
"	8. Paid Geo. Armstrong, clerk district court, cost in making order sale and confirming sales, &c	18 78	18 78	
	Attorney's claim for services in probate and district court account estate.....	150 00	150 00	
	Administrator's services from May, 1871.....	150 00	150 00	
		$1,473 80	$10,331 99	

(Endorsed:) Filed April 9, 1874.

WM. L. PEABODY,
Probate Judge.

Douglas county, *ss.*

Recorded the preceding inventory on this 9th day of April, 1874.

WM. L. PEABODY,
Probate Judge.

156 STATE OF NEBRASKA, } ss.
Douglas county, }

At a probate court held at the probate court-room in and for said county, April 9, A. D. 1874. Present, William L. Peabody, probate judge. In the matter of the estate of John A. Parker, jr., deceased. On filing the duly-verified account of the administrator of said estate, praying for its allowance and for an order of distribution of said estate among the creditors.

Ordered that April 25, A. D. 1874, at 3 o'clock p. m., is assigned for hearing said petition, when all persons interested in said matter may appear at a probate court to be held at the court-house in and for said county, and show cause why the prayer of petitioner should not be granted; and that notice of the pendency of said petition and the hearing thereof be given to all persons interested in said matter, by publishing a copy of this order in the Omaha Weekly Republican, a newspaper printed in said county, for three successive weeks prior to said day of hearing.

WM. L. PEABODY,
Probate Judge.

157 STATE OF NEBRASKA, } ss.
County of Douglas, }

At a probate court held at the probate court-room in and for said county, April 25, 1874. Present, Wm. L. Peabody, probate judge.

In the matter of the estate of John A. Parker, deceased.

Order of allowance of adm'r's acc'ts.

This day having been assigned for hearing the prayer of the administrator of said estate for the allowance of his first account and for an order of distribution, and it appearing from affidavit on file herein that the order of publication has been complied with; and now comes John A. Horbach, administrator as aforesaid, and showing that the whole amount of moneys which have come into his hands as such administrator is $2,770.60, and that the whole amount of his debts allowed against said estate is $10,388.24, and that the amount of preferred claims allowed against the estate is $1,905.40, and that after payment of said preferred claims there is remaining in his hands $865.20, which is not sufficient to pay but 10 per cent. of said debts remaining unpaid; and said account appearing to be correct in all respects, it is ordered by the court that the same be approved, and that the administrator pay from said remaining funds in his hands to the probate judge $5.45, his fees to

date, and that he pay on each of said allowed claims unpaid the sum of ten per cent. of the amount thereof.

WM. L. PEABODY,
Probate Judge.

(Endorsed:) "Filed April 25, 1874; Wm. L. Peabody, probate judge."

158 In the probate court for Douglas county, state of Nebraska.

In the matter of the estate of John A. Parker, jr., deceased.

To said probate court:

The petition of the undersigned shows that he herewith files his final account as administrator of said estate; that he prays this court for a settlement and allowance of such account as filed, and for such decree for distribution of the assets of said estate as may be just and proper, and for these purposes a time and place be fixed for examining, settling, and allowing such account, and such notice thereof ordered given as to the court may seem proper.

JOHN A. HORBACH,
Administrator of said Estate.

Estate of John A. Parker, jr., in account with John A. Horbach, administrator or amounts paid on claims, viz.:

	Claims filed.	Am'ts paid.
T. W. T. Richards, telegraph at death of Parker	12 10	12 10
L. B. Gibson, probate judge's fees	20 25	20 25
John Sparks, attendance in last sickness	20 70	20 70
Dr. P. H. Hale, Physician in attendance	118 00	118 00
Jno. Wirth, meals to Parker's room while sick	3 55	3 55
Jno. Walker	11 75	11 75
Geist & Pike	3 20	3 20
159 G. H. & J. S. Collins, slipper for burial	2 00	2 00
Geo. Medlock, digging grave	12 50	12 50
Mr. Hunt, livery to funeral	21 50	21 50
J. K. Ish, medicine bill	32 15	32 15
J. A. Horbach, telegrams and replies from family	13 75	13 75
Dr. Peck and Moore, consulting physicians	45 00	45 00
Gish & Jacobs, coffin and shrouding	195 23	195 23
Wilbur & Sprague, livery to funeral	16 50	16 50
J. F. Coffman " "	13 00	13 00
Jno. Clark " "	10 00	10 00

	Claims filed.	Am'ts paid.
County tax for 1870 on lots (15).....	69 00	69 00
" " " (14).....	64 40	64 40
City " " " (15).....	60 00	60 00
City tax " " (14).....	56 00	56 00
H. H. Rice, on mortgage to release lots....	399 00	399 00
County tax for 1871 on 15 lots.....	75 04	75 04
City " " 15 lots.	52 90	52 90
County " " 3 lots, H. add.....	19 53	19 53
City " " 3 " "	13 60	13 60
Attorney's services in probate and district courts.....	50 00	50 00
Stamp on letter, administration and bond	3 50	3 50
R. Townsend, probate court fees.....	6 30	6 30
Omaha Republican, printing add. notice..	6 25	6 25
Omaha Republican, publication sale Nov., '73, publication order Oct., '73, and		
160 2 sales, Feb., '74.....	23 00	23 00
Paid acknowl. administrator's deeds	1 50	1 50
Paid Geo. Armstrong, clerk district court, cost for application and confirming sales	18 78	18 78
Interest on am'ts advanced by administrator to pay delinquent tax on estate property for detailed statement in list of claims allowed on file in probate court...	89 47	89 47
Interest on amounts advanced by administrator to pay preferred claims, funeral expenses, ex-physicians, per detailed statement on claims filed and allowed by probate court.....	84 70	84 70
Paid Republican, advertising notice of distribution of funds.....	6 25	6 25
Administrator's services allowed.....	150 00	150 00
To amount preferred claims allowed.....	1,905 40	
		Am't paid.
Jno. Webb, rent of Parker's room.....	13 50	1 35
J. M. Burk, bill of merchandise.....	39 65	3 96
Dewey, Trimble & Co., furniture bill.....	13 00	1 30
Miller & Richardson.....	4 00	40
Byron Reed, bill for map.....	3 00	30
J. H. Steine, clothing bill.....	15 75	1 58
S. V. Niles, costs in supreme court.....	78 15	7 82
J. A. Horbach, note of J. A. Parker, jr....	1,000 00	100 00
J. A. Horbach, claim J. A. Parker, sr., against Parker, jr., assigned, $8,734.00, less am't served on bond, $3,400.00.	5,334 00	533 00
161 W. R. Vaughn & Jno. Wray, on judgment.....	1,751 63	175 16

		Am't paid.
R. L. Parker, note of J. A. Parker, jr.....	80 16	8 01
A. &. H. Kountze, note.....	100 00	10 00
Total claims allowed.....	10,338 24	
Am't paid Peabody, probate judge, fees....	5 45	5 45
Dr. E. H. Den, medical bill.....	56 00	5 60
Republican, advertising notice of close of administration.....	6 25	6 25
Probate court charges.....	7 25	
Total amount of claims and expenses of administration, as per bills above allowed, $10,413.19. Amount of preferred bills and expense of administration and probate court costs paid, $2,770.60.....	$10,413 19	$2,773 23

STATE OF NEBRASKA, }
County of Douglas, } *ss.*

John A. Horbach, being duly sworn, says that he is the administrator named in the foregoing petition and account, which petition is subscribed by him; that said account is in all respects just and true, full and complete, to the best of his knowledge, information and belief.

JNO. A. HORBACH,
Administrator.

Sworn to before me and subscribed in my presence this 20th day of October, 1874.

WM. L. PEABODY,
Probate Judge.

Douglas County, ss:

Recorded the above report and affidavit this 20th day of October, 1874.

WM. L. PEABODY,
Probate Judge.

162 STATE OF NEBRASKA, }
County of Douglas, } *ss.*

At a probate court held at the probate court-room in and for said county, October 20th, 1874. Present, Wm. L. Peabody, probate judge.

In the matter of the estate of John A. Parker, deceased. }

On filing the duly verified final account of John A. Horbach,

administrator of said estate, praying its allowance and for the discharge of said administrator—

Ordered, that November 20th, 1874, at 10 o'clock a. m., is assigned for hearing said petition, when all persons interested in said matter may appear at a probate court to be held in and for said county, and show cause why the prayer of petitioner should not be granted; and that notice of the pendency of said petition and the hearing thereof should be given to all persons interested in said matter, by publishing a copy of this order in the Omaha Weekly Bee, a newspaper printed in said county, for three successive weeks prior to said day of hearing.

WM. L. PEABODY,
Probate Judge.

163 STATE OF NEBRASKA, } ss.
County of Douglas, }

At a probate court held in and for said county on the 20th of November, 1874. Present, Wm. L. Peabody, probate judge.

In the matter of the estate of John A. Parker, jr., deceased.

Order for Discharge.

Pursuant to an order of this court made on the 20th of October, 1874, assigning the 20th of November, 1874, at the probate court-room, as the time and place for the hearing upon the petition of John A. Horbach, administrator of said estate, praying for the allowance of his final account and for his discharge as said administrator;

Now comes the said petitioner, and no one appearing, and being satisfied by written proofs and affidavit now here filed in this court that the said administrator has in all respects complied with the orders of this court and administered the estate according to law, it is ordered that a discharge in the usual form of law issue out of and under seal of this court, discharging the said John A. Horbach of all and from further duties, liabilities, and responsibilities as such administrator.

WM. L. PEABODY,
Probate Judge.

(Endorsed:) "Filed November 20th, 1874. Wm. L. Peabody, probate judge." Recorded the proceeding "order for discharge of administrator," this 20th day of November, 1874.

WM. L. PEABODY,
Probate Judge.

164 *Discharge of Administrator.*

STATE OF NEBRASKA, } ss.
County of Douglas, }

Probate court for said county, Wm. L. Peabody, judge of probate.

In the matter of the estate of John A. Parker, jr., deceased.

To John A. Horbach, administrator of said estate:

Whereas it appears by the records and proceedings of said court, you, the said John A. Horbach, have in all things faithfully and justly performed and discharged all and singular the duties and obligations which by law and the orders of said court were required of and enjoined upon you as such administrator, and that you have duly and fully accounted for and administered all of said estate which has come into your possession in pursuance of law;

Therefore, in consideration of the premises, you, the said John A. Horbach, administrator as aforesaid, are hereby discharged, exonerated and acquitted from any and all liabilities and troubles concerning the administration of said estate, and your doings and proceedings are forever quieted, your bond of canceled, and your letters of administration heretofore granted are hereby revoked and annulled.

In witness whereof, I have hereunto set my hand, affixed the seal of said court, at the county court-room, in Omaha, this 20th day of November, A. D. 1874.

[L. S.] WM. L. PEABODY,
Probate Judge.

164½ "Filed November 20th, A. D. 1874. Wm. L. Peabody, probate judge." Douglas county, *ss.* Recorded the preceding "discharge," November 20, A. D. 1874. Wm. L. Peabody, probate judge.

165 *Exemplification of Record.*

STATE OF NEBRASKA, } ss.
County of Douglas, }

In the county court for said county.

I, William O. Bartholomew, county judge for said county, do hereby certify that I have compared the foregoing copy of petition for appointment of administrator, order of hearing, order for letters, bond of administrator, order on granting administration, letters of administration, warrant and inventory, order allowing claims, order of hearing, order extending time to settle and present

claims, certificate of filing judgment, petition for filing distribution, order of hearing, order for dividend, petition for settlement of final account, and final account, order of hearing, decree of court, and discharge of administrator, in the matter entitled "In the matter of the estate of John A. Parker, jr., deceased," with the original record thereof, now remaining in this office, and have found the same to be a correct transcript therefrom, and of the whole of such original record.

In testimony whereof, I have hereunto set my hand and affixed the seal of the county court, at Omaha, this 14th day of November, A. D. 1879.

[SEAL.] WM. O. BARTHOLOMEW,
County Judge.

166 STATE OF NEBRASKA, }
County of Douglas, } *ss.*

I, Wm. O. Bartholomew, do hereby certify that I am the president judge of the county court for said county; that the said county court is a court of record, and has a seal; that said county court is the successor of the probate court for said county; that said county court has no clerk; and that the above attestation is in due form, according to the laws of the state of Nebraska.

In witness whereof, I have hereunto set my hand and official seal, the 14th day of November, A. D. 1879.

(SEAL.) WM. O. BARTHOLOMEW,
County Judge, Douglas County, Nebraska.

Fees of transcript, $10.00.
Certificate, - - .50.
——— $10.50.

167 Thereupon afterwards, at the November term of said court, to wit, on the 28th day of November, 1879, the following proceedings were had in said case, as appears of record on folio 3, journal F, of said court:

Edward B. Hill
vs. } No. 336 D.
John A. Horbach.

It is ordered by the court that this cause be, and the same is hereby, referred to W. H. Munger, esq., as a special master of this court, to report on the law and facts as shown by the pleadings and proofs herein.

Thereupon afterwards, to wit, on the 25th day of February, 1880, a report of referee was filed in said case, which said report is in words and figures following, to-wit:

To the honorable the circuit court of the United States for the district of Nebraska:

The undersigned referee, to whom has been referred the case of

Edward B. Hill against John A. Harbach, to report upon the law and facts of the case, begs leave to report the following as his conclusions of fact and law:

First. That on or about the 7th day of September, 1870, John A. Parker, senior, conveyed by deed to John A. Parker, junior, the lots in complainant's bill mentioned and described as follows, to wit: lots eight, nine, ten, eleven, twelve, thirteen, and fourteen in block four; and lots seven, eight, nine, ten, eleven, and twelve in block five; and lots three, four, five, and six, in block seven all in Parker's addition to Omaha, which said conveyance was intended only as a security to indemnify the said John A. Parker, junior, against the payment of two certain bonds of about the sum of $3,000. The said John A. Parker, junior, as a part of the
168 same transaction, gave to said John A. Parker, senior, an instrument in writing to the effect that he would reconvey said real estate back to said John A. Parker, senior, upon his becoming released from said two bonds.

Second. That on or about the 14th day of March, 1871, the said John A. Parker, junior, died, largely indebted, the said John A. Parker, senior, being his sole and only heir.

Third. That on or about the 20th day of March, 1871, the said John A. Parker, senior, conveyed by deed the said real estate mentioned and described in the pleadings in this action to the respondent, John A. Harbach.

Fourth. That at the time of said conveyance to said John A. Harbach, the said John A. Parker, senior, was largely indebted to complainant and others.

Fifth. That said conveyance by said John A. Parker, senior, to said John A. Harbach, was made for the purpose and with the intent to hinder and defraud the creditors of said John A. Parker, senior, in the collection of their said claims.

Sixth. That the respondent, John A. Harbach, at the time of said conveyance, knew that the said John A. Parker, senior, was largely indebted, and that he made such conveyance for the purpose of hindering and defrauding the creditors of said John A. Parker, senior, in the collection of their claims.

Seventh. That on the eighth day of May, 1871, the probate court of Douglas county, Nebraska, upon the petition of John A. Parker, senior, duly appointed the respondent, John A. Harbach, administrator of the estate of said John A. Parker, junior, and said John A. Harbach duly qualified and acted as such administrator.

Eighth. That under and by virtue of a license duly granted by the district court for Douglas county, Nebraska, the said re-
169 spondent, as such administrator, for the purpose of paying the debts of said estate of John A. Parker, junior, sold all of the real estate in the pleadings in this cause mentioned, and B. E B. Kennedy, Herman Kountze, and J. E. House were the purchasers of the same, each purchasing the several lots as stated in respondent's answer, and which said sales were afterwards duly

confirmed by the district court for said Douglas county, and deeds of conveyance made by said administrator in pursuance thereof to said purchasers.

Ninth. That the said B. E. B. Kennedy, Herman Kountze, and J. E. House purchased in good faith the said described real estate by them so purchased at said administrator's sale.

Tenth. That the said B. E. B. Kennedy purchased at said administrator's sale the said lots conveyed by said John A. Parker, senior, to said John A. Parker, junior, and described in first finding of fact.

Eleventh. That said B. E. B. Kennedy, at the time of his said purchase, had notice that the conveyance from said John A. Parker, senior, to John A. Parker, junior, was intended as security against the payment of said two bonds of about $3,000, and the said respondent, John A. Horbach, also at the time of said sale had such notice.

Twelfth. That the only interest the said John A. Parker, junior, had in and to the lots conveyed to him by said John A. Parker, senior, was that of mortgagee.

Thirteenth. That the administrator sale of said lots so conveyed by said John A. Parker, senior, to said John A. Parker, junior, conveyed no title to the purchaser, he having notice that the interest of said Parker, junior, was only that of mortgagee.

Fourteenth. That the respondent, John A. Horbach, acquired no title to the said lots so by him purchased of said B. E. B. Kennedy, and being the lots so conveyed by said Parker, senior, to said Parker, junior, he having notice that the interest of said Parker, junior, was only that of mortgagee.

170 Fifteenth. That the conveyance of the real estate in the pleadings described, from John A. Parker, senior, to respondent, John A. Horbach, on or about the 20th day of March, 1871, was fraudulent and void as to the creditors of said John A. Parker, senior.

Sixteenth. That in August, 1877, the complainant commenced a suit in the district court for Douglas county against said John A. Parker, senior, and attached the real estate in the pleadings in this action described.

Seventeenth. That in said action in the district court for Douglas county, the only service had upon said Parker, senior, was by publication, and there was no appearance on the part of said Parker.

Eighteenth. That the respondent, John A. Horbach, by his purchases from said B. E. B. Kennedy, Herman Kountze, and J. E. House, acquired such a title to the real estate so purchased, except the lots mentioned in the first finding, as conveyed by said Parker, senior, to said Parker, junior; that no lien attached to the same by virtue of the attachment proceedings at the suit of complainant against said John A. Parker, senior.

Nineteenth. That complainant, basing his claim for relief in this action upon the title which he acquired by virtue of the proceed-

ings had in the district court for Douglas county, in the action between complainant and said John A. Parker, senior, is entitled in this action only to a decree as prayed for, quieting his title as against the title of respondent to the lots conveyed by said John A. Parker, senior, to John A. Parker, junior, and described as follows, viz.: Lots eight, nine, ten, eleven, twelve, thirteen,
171 and fourteen in block four, and lots seven, eight, nine, ten, eleven and twelve in block five, and lots three, four, five and six in block seven, all in Parker's addition to Omaha.

Twentieth. That as to all the other real estate in the complainant's bill described, except the lots mentioned in the above nineteenth finding, complainant is not in this action entitled to the relief asked for.

W. H. MUNGER,
Referee.

Said report of referee is endorsed as follows: No. 336 D. Edward B. Hill, complainant, vs. John A. Horbach, respondent; report of referee; filed Feb'y 25, 1880. Watson B. Smith, clerk.

172 Thereupon afterwards, to wit, on the 16th day of March, 1880, exceptions were filed in said case, which said exceptions are in words and figures following, to wit:

In the circuit court of the United States for the district of Nebraska.

Edward B. Hill, complainant,
vs.
John A. Horbach, respondent.

Now comes the complainant Edward B. Hill, and files his exceptions to the referee's report filed herein.

Complainant excepts to the ninth finding of said referee, for the reason that the proof does not show that Kennedy, Kountze, and House purchased said property in good faith, as found by said report. And to the eighth finding, on the ground that the proofs do not sustain it.

Second. Complainant excepts to the eighteenth finding of said referee, for the reason that the proof clearly shows that John A. Horbach, by his purchase of the property mentioned in the bill from Kennedy, Kountze and House, aside from the seventeen lots referred to by the said referee in his finding, purchased said lots subject to the lien of complainant, and for the purpose of defrauding him and the other creditors of said Parker, senior, and that his finding in that behalf is contrary to the evidence and contrary to law.

Third. Complainant excepts to the nineteenth finding of said referee, for the reason that the said referee should have found that the complainant was entitled in this action to a decree quieting his title to all the property mentioned in the bill, instead of but sev-

enteen of said lots, and that such finding is contrary to the evidence and the law in the case.

173 Fourth. And complainant excepts to the last finding of said referee, for the reason that the said referee should have found all the allegations of complainant's bill to be true, and finding complainant entitled to all the property mentioned in the bill, and the relief therein prayed. And that said finding is contrary to the evidence and law.

REDICK & REDICK,
Solicitors for Complainant.

Said exceptions are endorsed as follows: 336 D, in circuit court, U. S. district of Nebraska. Edward B. Hill, complainant, vs. John A. Horbach, respondent. Complainant's exceptions to referee's report. Filed March 16, 1880; Watson B. Smith, clerk; Redick & Redick, solicitors compl't.

Thereupon afterwards, to wit, on the 20th day of March, 1880, exceptions were filed in said case, which said exceptions are in words and figures following to wit:

In the circuit court of the United States, district of Nebraska.

Edward B. Hill, complainant, *vs.* John A. Horbach, respondent. } In Chancery.

The respondent now comes and excepts to certain findings of fact and conclusions of law in the said report of the referee on file in this cause, and asks that the said exceptions be heard and allowed by the court.

First. The respondent excepts to the third finding (of fact) in said report, for that said finding is not full and complete and not in accordance with the facts proven. That the proofs show and the referee should have found that the respondent purchased all of said property from said Parker, senior, about March 20th, 1871, in good faith, and for valuable and full consideration, with-

174 out notice of said indebtedness to the complainant or other creditors of said Parker.

Second. The respondent excepts to the fourth finding (of fact) in said report, for that the same is not sustained by the evidence given on the hearing.

Third. The respondent excepts to the fifth finding (of fact) in said report, for that the same is not sustained by the evidence given on the hearing.

Fourth. The respondent excepts to the sixth finding (of fact) in said report, for that the same is not sustained by the evidence, but on the contrary thereof, the evidence conclusively shows, and said referee should have found, that at the time of said conveyance by John A Parker, senior, to the respondent, the respondent had no knowledge whatever "that said John A. Parker, senior,

was largely indebted, and that he made such conveyance for the purpose of hindering and defrauding the creditors of said John A. Parker, senior, in the collection of their claims."

Fifth. The respondent excepts to the twelfth finding (of law) in said report, for that the same is not sustained by the evidence and is contrary to the law.

Sixth. The respondent excepts to the thirteenth finding (of law) in said report, for that the same is not sustained by the evidence and is contrary to the law.

Seventh. The respondent excepts to the fourteenth finding (of law) in said report, for that the same is not sustained by the evidence and is contrary to the law; but on the contrary thereof, the evidence shows conclusively that said respondent, before the said administrator's sale, was the lawful owner of all the interest of said John A. Parker, senior, in said seventeen lots, by purchase for a valuable consideration without notice.

175 Eighth. The respondent excepts to the fifteenth finding (of law) in said report, for that the same is erroneous and contrary to the law and is not sustained by the evidence, that said finding should have been that said conveyances to the respondent were and are valid in law, and passed to the respondent a good and indefeasible title to all of said property in fee simple.

Ninth. The respondent excepts to the nineteenth and twentieth findings (of law) in said report, for that the said findings and each of them are erroneous in law and are not sustained by the proofs. That said findings upon the law and the evidence should have been wholly in favor of the respondent and against the complainant, and that the bill be dismissed at the cost of the complainant.

KENNEDY & GILBERT
and WEBSTER & GAYLORD,
Att'y's for Respond't.

Said exceptions are endorsed as follows:

336 D. In circuit court of U. S. dist. of Neb. Edward B. Hill *vs.* John A. Hørbach. Respondent's exceptions to referee's report. Filed March 20, 1880. Watson B. Smith, clerk. Kennedy & Webster.

Thereupon afterwards, to wit, on the 7th day of March, 1881, an order of reference was filed and entered of record in said case, which said order is in words and figures following, to wit:

Circuit court, U. S. district of Nebraska.

Edward B. Hill
vs.
John A. Hørbach.

Ordered, That this cause be referred to D. G. Hull, master, with instructions to report upon the questions of the value of the prop-

attached and sold to complainant under the order of attach-
179 ment the property of John A. Parker, sr., and liable to be attached and sold for his debts; and that the respondent Horbach had no equitable interest in said lots or any of them, and that the legal title to said lots held by him was taken and procured by said Horbach with intent to defraud the creditors of said Parker, sr., and especially the complainant, and was null and void.

It is therefore ordered, adjudged and decreed by the court that the said respondent John A. Horbach shall within twenty days from the filing of this decree convey by a good and sufficient deed with covenants against his own acts the above described lots and all thereof to the complainant, Edward B. Hill, and in default thereof this decree shall stand in lieu of, and shall have the same effect as, said conveyance if made; and that said Horbach and all persons claiming by, through, or under him are forever barred of all interest therein of every kind and value or to any part thereof.

And that said complainant is entitled to the possession of all of said property, and that the respondent is directed and adjudged by the court to deliver possession of the same to said complainant upon presentation of a certified copy of this decree.

And that the title to said property be forever quieted in said complainant, and that the respondent pay the costs of this action.

To all and singular the above findings and decree of said court the respondent excepts; and it appearing from the testimony of complainant's witnesses of record that said property in controversy is of the value of more than five thousand dollars, the respondent prays an appeal to the supreme court of the United States. Appeal allowed, and supercedias bond fixed at $2,000.00.

(Signed,) GEO. W. McCRARY,
Circuit Judge.

Thereupon afterwards, to wit, on the 9th day of May, 1881,
180 a bond was filed in said case, which said bond is in words and figures following, to wit:

U. S. circuit court, district of Nebraska.

Edward B. Hill }
vs. }
John A. Horbach. }

Know all men by these presents that we, John A. Horbach as principal and Samuel E. Rogers as surety, are held and firmly bound unto Edward B. Hill, his heirs and assigns, in the penal sum of two thousand dollars, for the payment of which sum well and truly to be made we bind ourselves, our heirs, and assigns, severally by these presents.

The condition of this obligation is, that whereas the above-bounden John A. Horbach has taken an appeal to the supreme court of the United States from the final decree of the circuit court

of the United States in the district of Nebraska, in favor of the complainant in the above-entitled cause, on the 3rd day of May, A. D. 1881—

Therefore, if said John A. Horbach shall prosecute his said appeal to effect, and pay all damages and costs if he fails to make his said appeal good, then this obligation to become null and void, otherwise to remain in full force.

Dated this 4th day of May, A. D. 1881.

JOHN A. HORBACH.
SAMUEL E. ROGERS.

Said bond is endorsed as follows: 336 D. U. S. circuit court, district of Nebraska. In chancery. Edward B. Hill *vs.* John A. Horbach. Appeal Bond. Filed May 9th, 1881. Watson B. Smith, clerk.

The within bond and surety is approved, this 9th day of May, A. D. 1881. Elmer S. Dundy, judge.

181 UNITED STATES OF AMERICA, } *ss.*
District of Nebraska, }

I, Watson B. Smith, clerk of circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the foregoing folios, from one to one hundred and eighty, contain true and faithful transcripts of the pleadings and proceedings of record and on file in my office as said clerk, and the whole thereof and the indorsements thereon in the case of Edward B. Hill, complainant, *vs.* John A. Horbach, defendant.

Witness my hand and the seal of said court at Omaha, this 4th day of October, A. D. 1881.

[SEAL.] WATSON B. SMITH, *Clerk.*

(Endorsement on cover:) Nebraska, C. C. U. S.; No. 336; John A. Horbach, appellant, *vs.* Edward B. Hill. Filed 7th October, 1881; 181 pages.

112-144

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 39.

JOHN A. HORBACH, Appellant,

vs.

EDWARD B. HILL.

BRIEF FOR APPELLANT.

WALTER D. DAVIDGE,
For Appellant.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 39.

JOHN A. HORBACH, APPELLANT,

vs.

EDWARD B. HILL, APPELLEE.

BRIEF FOR APPELLANT.

Statement of the Case.

On the 14th of March, 1871, John A. Parker, junior, died intestate in the city of Omaha, Nebraska, leaving as his sole heir at law his father, John A. Parker, senior. The decedent left no personal estate of any value, (R., 92,) but was the owner in fee-simple of a number of unimproved lots of ground in said city. In addition to the lots thus owned he held a deed in fee for seventeen other lots in the same place, which he had purchased from his father on the 17th of September, 1870, but which were subject to a written agreement to reconvey to the father on certain prescribed terms. These seventeen lots are the same mentioned in the decree below and are the subject of this appeal. The deed of conveyance to the decedent will be found, R. 67.

The debts of the decedent were considerable, and among his creditors was the appellant, to whom there was due $1,000 and upwards. (R., 94, 95.) The father and heir at

law was the largest creditor. His debt amounted to $8,734 and was evidenced by a written settlement, dated the 17th of September, 1870, the same paper which made provision for the reconveyance of the seventeen lots.

Upon the death of the decedent, his father, a citizen and resident of the State of Virginia, went to Omaha to attend the funeral, and whilst there, on the 20th of March, 1871, sold his interest in the estate of the son, whether as heir at law or creditor, and also his interest under the agreement for the reconveyance of the seventeen lots, to the appellant for a valuable consideration, and, by deed of that date, conveyed to the appellant all the lots standing in the name of the decedent, and on the same day assigned to the appellant the paper writing containing the settlement and agreement to reconvey the seventeen lots.

The said paper writing and the assignment thereof are as follows, (R., 76):

OAKLAND, DINWIDDIE C'Y, VA., *September 7th*, 1870.

I have this day purchased of my father, John A. Parker, Sr., seventeen lots in Parker's addition to Omaha, Nebraska, and he has given me an order on John A. Horbach (who holds a full power of attorney from him and Louisa C. Parker) to convey said lots to me. And on a final accounting of all business and accounts between my father and myself this day, including the purchase of the said seventeen lots, I find myself indebted to him in the sum of eight thousand seven hundred and thirty-four dollars ($8,734), which sum I am to pay to him or order, and to certain creditors of his as he shall hereafter name, one year from this date. And in case I am released from two certain bonds of three thousand dollars and upwards, I agree to reconvey to him, my father, the said seventeen lots this day purchased of him, for a like consideration, together with all expenses incurred on same, which sum shall be a credit to my indebtedness to him, my father, the said John A. Parker, Sr., and for the faithful performance of which, I do by these presents bind myself and heirs and assigns in the penal sum of seventeen thousand four hundred and sixty-eight dollars.

As witness my hand and seal, the day and year first written.

(Signed) JOHN A. PARKER, JR. [SEAL.]

(Written endorsements on the back as follows:)

"$8,734
3,400

$5,334 balance exclusive of 17 lots."

OMAHA, 20*th March*, 1871.

Having this day sold to John A. Horbach, Esq., my interest of seventeen lots in Parker's addition to Omaha, also all my interest in the estate of my son, John A. Parker, Jr., comprising all lots, lands, and claims in the counties of Douglas and Burt, in the State of Nebraska, I hereby sell and assign to said John A. Horbach the within claim against said estate, and authorize him to collect the same, he agreeing to pay the debts in Omaha, Neb., due to himself and others, amounting to the sum not exceeding $2,200.

(Signed) JOHN A. PARKER.

There is nothing in the record to show for what the bonds mentioned in the above paper were given, nor by whom they were held, whether by the father or some third party.

On the 8th of May, 1871, the appellant, as a creditor of the estate, was appointed administrator of the decedent, and duly qualified, (R., 88.) The administration proceedings are set out at length in the record and occupy from page 78 to page 108, inclusive.

There being no personal estate, it became necessary to sell the real estate, and, accordingly, under orders of the District Court of Douglas county, dated October 15 and 23, 1873, (R., 80, 81,) all the lots of ground in the name of the decedent, as well those which he owned in fee, as the seventeen, which were subject to the provisions of the said paper, were sold at public auction on the 17th of November, 1873, and the 23d of February, 1874, and J. E. House, Herman Kountze, and B. E. B. Kennedy severally became purchasers, (R., 82,

83, 84, 86.) The last mentioned bought the seventeen lots, (R., 86.) The said sales were duly reported to the court and ratified, (R., 87,) and the lots were conveyed to the respective purchasers, and the proceeds of sale applied in due course of administration, and on the 20th of November, 1874, the appellant was fully exonerated by the court from all liability as administrator and his bond cancelled, (R., 107.)

Subsequently, the appellant purchased at advanced prices from the said J. E. House, Herman Kountze, and B. E. B. Kennedy many of the lots bought by them at the administration sale. The deeds for these purchases are dated January 21, 1875, December 18, 1874, March 23, 1875, and December 21, 1874, and will be found R., 61, 62, 58, 69. Of the seventeen lots subject to reconveyance, as above stated, and which Kennedy had purchased, *fifteen* were, with other lots, sold and conveyed by him to the appellant by the above deed, dated December 21, 1874, (R., 69.)

Such was the state of things when, on the 1st of December, 1877, the appellee, Edward B. Hill, recovered, in a court of the State of Nebraska, a judgment by default against John A. Parker, Sr., for $3,244 and costs. The only process was constructive, by publication, although both plaintiff and defendant were citizens of the State of Virginia and residents of adjacent counties. The judgment, after adjudicating the debt *in personam*, declares the attachment proceedings regular, and directs that an order of sale issue to the sheriff to sell the property attached. (R., 56.)

On the 3d of August, 1877, the appellee filed the bill in this cause in the circuit court for the district of Nebraska. (R., 1.)

The bill is to quiet title. It avers the title of John A. Parker, the son, to all the property in fee-simple; his death; and the descent to John A. Parker, the father, as heir-at-law; that the latter attempted to convey "all said property to which he became heir" to the appellant, but that such conveyance was without consideration and made to delay, hinder,

and defraud creditors. It further alleges that administration was taken out by the appellant, under an agreement that he "should so manage and manipulate the estate of Parker, junior, as to hide and cover up as much thereof as possible for the use of John A. Parker, senior," and that the sales to House, Kountze, and Kennedy were without consideration and fictitious, the purchaser-in-fact being the appellant to whom they conveyed. It then alleges the judgment in the attachment suit, and claims that the order of sale upon the judgment was issued, and that the sheriff sold the property attached and the appellee bought, and that the sale was confirmed and thereafter the sheriff conveyed to the appellee, and it prays that the appellee may be decreed to be the owner in fee of all the property, and that the appellant be required to convey.

The bill in terms and in its scope is directed to such title as the appellant obtained from John A. Parker, senior, as heir-at-law of his son.

The bill is not sworn to and waives an answer under oath. (R., 5.)

The averments of the bill were put in issue by the answer, which also sets up the agreement to reconvey the seventeen lots (R., 8). A replication was then filed (R., 10), and the case thus made was the only case litigated and tried.

After the evidence had been taken and the cause was ready for hearing, it was referred to a special master "to report on the law and the facts, as shown by the pleadings and proofs." (R., 108.)

The report of the special master (R., 108), denied any relief to the complainant, except as to the seventeen lots.

It held, except as to them, that House, Kountze, and Kennedy purchased in good faith at the administration sale, and that the appellant, purchasing from them, acquired such a title as was not subject to any lien by virtue of the attachment proceedings.

Findings, 8, 9, 18, 19, 20; R., 109, 110, 111.

As to the seventeen lots, the report held that the decedent was mortgagee; that the deed from John A. Parker, senior, to the appellant was made by the former when largely indebted to the appellee and others, and for the purpose of hindering, delaying, and defrauding creditors, and that the appellant knew the same, and that said deed was void; that the purchase of the said lots by Kennedy at administration sale was in good faith, but with notice that the title of the decedent was that of mortgagee only, and that hence no title was acquired; that no title was acquired by the appellant by his purchase from Kennedy of said lots, because of the like notice, and that the appellee was, as to the said lots, entitled to a decree to quiet title.

Findings, 1, 4, 5, 6, 12, 13, 14, 15, 18, 19; R., 109, 110.

Exceptions were filed in behalf of both parties, but the court, at the hearing, overruled all the exceptions and adopted the report, and decreed accordingly. The decree adjudges that the seventeen lots were, at the commencement of this suit, the property of the appellee, and orders that the appellant shall convey to the appellee, and in default thereof, that the decree shall stand in lieu of such conveyance, and that the appellant shall be forever barred of all interest in the property, and shall deliver possession to the appellee upon presentation of a copy of the decree. (R., 115, 116.)

The appellant then prayed this appeal. (R., 116.)

The appellee took no appeal.

Assignment of Errors.

1. The court erred in overruling the exception of the appellant to the nineteenth finding of the special auditor (R., 110), and in holding that the appellee, at the commencement of this suit, had acquired such a title to the seventeen lots as entitled him to seek in equity the relief granted by the decree.

2. The court erred in overruling the exception of the appellant to the nineteenth finding (R., 110), and in holding that under the pleadings in the cause there was presented the question whether John A. Parker, senior, was mortgagor of the seventeen lots, or any other question than whether the appellant was entitled to the property whereof John A. Parker, junior, died seized, and which at his death descended to John A. Parker, senior, as heir-at-law, and was conveyed by the latter to the appellant, and afterwards sold by him as administrator.

3. The court erred in overruling the exception to the fifteenth finding, (R., 110), and in holding that the deed from John A. Parker, senior, to the appellant, of the 20th of March, 1870, was fraudulent and void as to the creditors of the grantor.

4. The court erred in overruling the exceptions, and each of them, to the fourth, fifth, and sixth findings, (R., 109), and in holding that when the deed from John A. Parker, senior, to the appellant, of the 20th of March, 1870, was made the grantor was largely indebted to the appellee and others, and that the deed was made for the purpose and with the intent of hindering and defrauding creditors, and that the appellant knew of such purpose and intent.

5. The court erred in overruling the exception to the twelfth finding, (R., 110), and in holding that the interest of John A. Parker, junior, in the seventeen lots was that of mortgagee only, and that after the deed to him there remained in John A. Parker, senior, such an interest as was subject to attachment.

6. The court erred in overruling the exception to the nineteenth finding, (R., 110), and in holding that under the attachment proceedings, in which jurisdiction was obtained by the State court by publication and without personal service, the appellee could acquire the right to assail the deed

from John A. Parker, senior, to the appellant, and was not bound by the said deed equally with John A. Parker, Senior.

Argument and Points.

1. As to the first assignment.

The bill is to quiet title. It is not a creditor's bill. The decree is for conveyance and possession, not for sale.

It was incumbent upon the appellee to aver and prove such title as was entitled to the protection sought. The bill avers title, and sets up the different steps by which it is claimed to have been acquired. (R., 2) But the answer does not admit these everments. The only evidence is the judgment. (R., 56.) There is no evidence that the order of sale issued, or that the sale was made and confirmed, and the property conveyed as alleged. The record of the attachment proceedings is not given in evidence. There is nothing to show what property was attached. Especially, there is nothing to show that the interest of John A. Parker, senior, attached, was more than his interest as heir-at-law.

If only his interest as heir-at-law was attached, that would be fatal to the decree, for by it the title of the appellant is maintained as to such interest.

The appellee *offered* in evidence (R., 48) portions of the attachment proceedings, but these are wholly insufficient to show title. The suppression of the rest does not give rise to a presumption favorable to the appellee. The finding of the special examiner is that "the complainant commenced a suit in the district court for Douglas county against said John A. Parker, senior, and *attached* the real estate in the pleadings in this action described." Sixteenth finding. (R., 110.)

There is no finding as to the sale, confirmation, and conveyance, and the decree was based upon the findings. (R., 115.)

By the law of Nebraska: A party against whom a judg-

ment or order has been rendered, without other service than publication in a newspaper, may, at any time within five years after the date of the judgment or order, have the same opened and be let in to defend. Before the judgment or order shall be opened, the applicant shall give notice to the adverse party of his intention to make such application, and shall file a full answer to the petition, pay all costs, if the court require them to be paid, and make it appear to the satisfaction of the court, by affidavit, that during the pendency of the action he had no actual notice thereof in time to appear in court and make his defence; but the title to any property, the subject of the judgment or order sought to be opened, which, by it or in consequence of it, shall have passed to a purchaser in good faith, shall not be affected by any proceedings under this section, nor shall they affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order, as provided by this section, shall be allowed to present counter affidavits to show that, during the pendency of the action, the applicant had notice in time to appear in court and make his defence.

General Stat., p. 536, s. 82.

The bill in this case was filed on the 3d of August, 1878. (R., 1.)

The remedy by bill to quiet title, has been enlarged by statute in Nebraska, and conditions of the remedy dispensed with.

Holland *v.* Challen, 110 U. S., 16.

Still the complainant must shew title (*id.*) and according to the decision of the supreme court of the State, "it is clear that a party not in possession must possess the legal title in order to maintain the action."

The State *v.* S. C. & P. R. R., 7 Neb., 357.

2. As to the second assignment.

The bill alleges that Parker, jr., died seized in fee-simple of the lots, and that they descended to his father and heir at law. The bill makes no discrimination between the seventeen lots and the others, but places them all in the same category, and seeks to avoid the title of the appellant upon a ground common to all—that of the specific fraud alleged. The bill, in substance, says that all the lots, as well the seventeen as the rest, passed under the dominion of the probate court as assets for the payment of debts, and that the court could rightfully sell all for the payment of debts, and did sell all, unless the sale was invalid upon the ground alleged. This was the issue joined. The only question to be tried was whether sales otherwise valid were invalidated because of the alleged fact that the purchasers were not such in truth, but that their names were used by the administrator, who was the real purchaser.

Even this issue was immaterial, for, if the allegation of the bill was true, the alleged invalidity concerned the creditors of the estate, and them alone; and it was not competent for the complainant, whose pretended title accrued long after, to avail himself of an alleged fraud practised upon other parties. Still, this was the only issue. The title of the decedent in fee was admitted, and the jurisdiction of the probate court was also admitted.

In the progress of the cause it was conclusively shown that the purchasers were not tools or instruments of the administrator, but that they were purchasers in good faith and for valuable consideration, and that the appellant had a right to acquire, and did acquire, their title. Then it is plain there was an end of the only impeachment made by the bill of the title of the appellant. Then there was an end of the case according to the terms and manifest scheme of the bill which averred that Parker, junior, died seized in fee of the lots in controversy, and that the title descended to Parker, senior, as heir-at-law.

What follows? A reference is made to a special master to report upon the law and facts, and he reports that the decedent was only a mortgagee of the seventeen lots, and that the purchaser had notice that the decedent was only such mortgagee; and that, hence, his title conveyed to the appellant was bad, as was the other title acquired by the appellant from Parker, senior, the heir-at-law. The conclusion of the special master is unintelligible upon his own theory. But the question at present is not whether he is right or wrong, but whether under a bill declaring seisin in fee, and admitting the title of the appellant as derived from the court save only for the specific impeachment, (which had been disposed of by the evidence,) a decree could be rendered upon a ground in direct opposition to the bill, and which had never been litigated and tried.

The bill was for actual fraud, and the complainant was bound by it; he was not entitled under such a bill to a decree, even if he had averred and proved facts which, independent of actual fraud, might have entitled him to relief under some other head of equity.

Eyre *v.* Potter, 15 How., 42, 56.
Moore *v.* Green, 19 How., 69.
Price *v.* Barrington, 7 Law and Eq., 254.

The bill could not be amended.

Shields *v.* Barrow, 17 How., 130.
Story's Eq. Pl., 884.

And if it could be amended, certainly the appellant was entitled to a trial.

He could not be decreed against upon a ground not put in issue by the bill.

3 and 4. As to the third and fourth assignments.

The deed is dated the 20th of March, 1871. The attachment suit was commenced by publication in August, 1877

(Sixteenth and Seventeenth Findings, R., 110), and on the 3d of December, 1877, judgment by default was rendered. (R., 56.) Thus more than six years elapsed before the appellee claims to be a creditor. Was he an existing creditor? There is not a particle of evidence to that effect. If he was not an existing creditor, by what right does he assail the deed? How was he injured?

The bill alleges that the grantor "was largely indebted unto your orator and divers and sundry persons, and was insolvent," but there is not even an attempt to sustain this averment.

> Sexton *vs.* Wheaton, 8 Wheat., 229, 1 Am. Lead. Cas., 1; Mattingly *vs.* Nye, 8 Wall., 370; Smith *vs.* Vodges, 92 U. S., 183.

As there is an utter absence of evidence to show that the appellee was an existing creditor, so there is none in relation to the financial condition and means of the grantor.

Again, the bill alleges that the grantor, after the death of his son "came to Omaha, Nebraska, and for the sole and only purpose of hindering, delaying, and defrauding his creditors, and on the 20th of March, 1871, attempted to convey, *without consideration, all said property to which he became heir &c.*"

This averment, that the deed was voluntary, is put in issue, and not a scintilla of evidence is adduced to support it. The only evidence on the subject is that of the appellant, who swears what the consideration was, and how it was paid. (R., 72, 73.) This consideration proved an utter loss to the appellant, for the debts of the estate turned out to be upwards of $10,000, largely in excess of what was supposed. (R., 99.) The appellant received but ten per cent. on his own debt and that of Parker, senior. (R., 104.) The consideration shown by the evidence of the appellant is $6,000. Even if Parker, senior, intended by the deed to defraud his creditors, there is no evidence that the appellant knew of

such intent. On the contrary, the evidence of the appellant is that he had no knowledge of any such purpose.

Dep. of appellant, R., 49.

The only attempt to impeach the deed is by showing by the evidence of a witness, T. W. Richards (R., 28), that he prepared the deed, and the grantor and grantee came together to his office, and the grantor brought with him a summons in a suit brought against him by one Basil Manley. (R., 29.) But this witness does not remember the matter distinctly, and is contradicted by the appellant (R., 74), and when recalled, as he was, swore that he did not know that he prepared the deed. (R., 53; see also R., 44, 45.) Even if Basil Manley claimed to be a creditor, and the appellant knew it, the grantor had a right to sell his property, in the ordinary course of business, for a valuable consideration, and the appellant to buy.

Certainly, one who was not a creditor at the time could not complain.

The depositions of Richards (R., 28 and 53) and of the appellant (R., 48 and 71) constitute the only evidence bearing upon the question of fraud, and their perusal cannot fail to satisfy the court that the several findings embraced in this assignment of error are utterly without any foundation in the evidence.

5. As to the fifth assignment.

Was the decedent a mortgagee? The deed to him conveys the property absolutely and for a valuable consideration. (R., 67.)

Then the agreement to reconvey provides as follows:

"And in case I am released from two certain bonds of three thousand dollars and upwards I agree to reconvey to him, my father, the said seventeen lots this day purchased of him, for a like consideration, together with all expenses incurred in same, which sum shall be a credit to my indebtedness to him, my father, the said John A. Parker, Sr., etc."

Now, what is this but a distinct and independent contract, whereby the father had the option or privilege, in case the son was released from the two bonds, to purchase back the property at the same price, and, in addition thereto, all expenses incurred by the son on account of the lots?

Was the father bound to take the property? Certainly not. Was the consideration of repurchase the same as that of the sale? On the contrary, in addition to the consideration of sale, the two bonds were to be released and the expenses paid.

How can such a transaction be justly called a mortgage? What was the debt and who the debtor or creditor? Can it be said that the son had the right to foreclose as for a debt and sell the lots and hold the father responsible for the difference between what they brought and the considerations for repurchase?

Would not the answer be to any such pretension, that the father owed no duty to the son to purchase, but held a mere option which he might exercise or not at his discretion?

The question arises solely upon the face of the paper writing and the deed, and both explicitly declare that the son was purchaser.

There are no extraneous facts to enlighten or control the import of the papers, such as an antecedent debt, a treaty for a loan, inadequacy of price, and the like. There is nothing but the agreement and deed, and that there was meant a transaction different from what they import is not averred, nor is there a particle of evidence. Indeed, the question was not even litigated, as already shown, but was an afterthought, and the appellant was thus deprived of an opportunity to confirm the written proofs by evidence of the surrounding circumstances.

In Conway *vs.* Alexander, 7 Cranch, 236, Ch. J. Marshall says: "To deny the power of two individuals, capable of acting for themselves, to make a contract for the purchase and sale of lands defeasible by the payment of money at a

future day, or, in other words, to make a sale, with a reservation to the vendor of a right to repurchase the same land at a fixed price and at a specified time, would be to transfer to the court of chancery, in a considerable degree, the guardianship of adults as well as of infants. Such contracts are certainly not prohibited either by the letter or the policy of the law."

See also Russell *vs.* Southard, 12 How., 139.
4 Kent's Comm., 144, and note.
4 Wait's Actions, and references, 514.

The whole purpose of the forced construction, whereby it is sought to make the decedent a mortgagee, is to make the father a mortgagor, and thereby give him an interest in the land liable to attachment.

By the law of Nebraska, an attachment will carry only the *legal or equitable title* to lands.

Gen. Stat. of Nebraska, p. 556, s. 198; p. 562, s. 228.

A sale under a judgment in attachment would not pass a a mere personal contract relating to lands, but giving no legal or equitable title or estate.

Such a sale would not convey even a trust created by operation of law.

Trask *v.* Green, 9 Mich., 358.

Hence, the necessity of making the decedent a mortgagor.

Next, if the son was mortgagee, what would be the effect? Assume that the equity of redemption was in the father, and the conveyance from him to the appellant void, and that by the purchase at the sale in the attachment proceeding such equity of redemption passed to the appellee; still the Probate Court had the right to sell the title of the mortgagee, and that title has passed to the appellant, and the only right of the appellee would be to redeem on the terms prescribed by the settlement. The assignee of the mortgagee would be